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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-820

PEOPLE OF THE STATE OF CALIFORNIA ex rel WILLIAM CAMIL, CITY ATTORNEY OF THE CITY OF DUARTE, CALIFORNIA,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondent,

BUENA VISTA CINEMA, being a building structure containing approximately 3,440 square feet (80' x 43'), located on real property commonly known as 1345 East Huntington Drive, Duarte, California; STEPHEN E. TILLANDER, d.b.a. BUENA VISTA CINEMA; DIVERSIFIED REALTY FUND "A", a Limited Partnership; TITLE INSURANCE AND TRUST COMPANY, a California Corporation; DUNN PROPERTIES CORPORATION, a California Corporation; JESS WILDER; INLAND EMPIRE ENTERPRISES, INC., a California Corporation; PHILIP A. FISHMAN; NORTH AMERICAN THEATRE ASSOCIATION, INC.; JOHN DOES 1 to 10,

Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT

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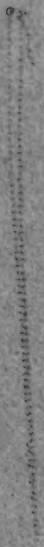

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-

PEOPLE OF THE STATE OF CALIFORNIA ex rel WILLIAM CAMIL, CITY ATTORNEY OF THE CITY OF DUARTE, CALIFORNIA,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondent,

BUENA VISTA CINEMA, being a building structure containing approximately 3,440 square feet (80' x 43'), located on real property commonly known as 1345 East Huntington Drive, Duarte, California; STEPHEN E. TILLANDER, d.b.a. BUENA VISTA CINEMA; DIVERSIFIED REALTY FUND "A", a Limited Partnership; TITLE INSURANCE AND TRUST COMPANY, a California Corporation; DUNN PROPERTIES CORPORATION, a California Corporation; JESS WILDER; INLAND EMPIRE ENTERPRISES, INC., a California Corporation; PHILIP A. FISHMAN; NORTH AMERICAN THEATRE ASSOCIATION, INC.; JOHN DOES 1 to 10,

Real Parties in Interest.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT

The Petitioner, People of the State of California ex rel. William Camil, City Attorney of

the City of Duarte, California, respectfully prays that a writ of certiorari issue to review the order of the California Supreme Court, filed September 10, 1975, which denied a hearing after judgment by the Court of Appeal denying a petition for a writ of mandate in 2d Civ. 46869. The petition in 2d Civ. 46869, being the third such petition for writ of mandate filed by Petitioner in the California State Courts, was originally filed in the Supreme Court of the State of California as an original petition under L.A. file No. 30497 on August 1, 1975. On August 4, 1975, said petition was transferred* to the Court of Appeal, Second District, where the case was decided upon the original papers and without the Court of Appeal having granted an alternate writ.

OPINION BELOW

The Court of Appeal, Second Appellate District, denied the petition for writ of mandate on the original papers and without writing an opinion.* The California Supreme Court entered an order, denying the petition for hearing, without writing an opinion.*

JURISDICTION

The order of the California Supreme Court

* See copies of orders at Appendix F-3 through F-5.

was entered on September 10, 1975. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

QUESTIONS PRESENTED

1. Whether, in denying the City of Duarte a prompt judicial forum in which to contest the right of the real party in interest to publicly exhibit for profit the hard-core sexual conduct depicted in the 85 motion picture films described in the petition, and exhibited continuously for the past 17 months, the judicial system of the State of California has deprived the citizens of the City of Duarte, California, as citizens of the United States of:

(1) due process of law and equal protection of the law, and

(2) the police power and "home rule" authority which is inherent in municipal authority, and

(3) one of the fundamental rights essential to the concept of well-ordered liberty; namely, the right to enjoy "common decency" and to live in a community whose public morals, moral values and environment are free from the illegal, degrading and corrupting influences of

such patently hard-core pornography?

2. Whether the facts specifically pleaded in the Complaint and the proof submitted on the motion for a preliminary injunction, indisputably established Petitioner's right to a preliminary injunction, and whether it was both an abuse of discretion and a denial of the constitutional rights described above in Question 1, for the trial court to deny such immediate relief as to each of the hereindescribed 85 pornographic films.

3. Whether the real party in interest had a Fifth Amendment right to refuse to produce the films "Johnny Wadd" and "The Blonde in Black Lace", which had been subpoenaed for the hearing on the motion for a preliminary injunction on December 19, 1974, and the two films "If Mother Could See Me Now" and an untitled second feature, which had been subpoenaed for the hearing on the motion for a preliminary injunction on March 3, 1975; and whether the refusal to require the production of such films was a denial of due process of law.

4. Whether a California corporation can be compelled to produce at its deposition in a civil proceedings questioning its right to do business, specifically identified corporate records, known to be in existence, in the face

of a Fifth Amendment claim by its corporate officer; and whether the refusal of the Superior Court to order the production of such records at the deposition, adjourned for the purpose of obtaining such an order, amounted to an abuse of discretion and denial of due process of law.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of the First, Fifth, and Tenth Amendments to the Constitution are set forth in Appendix A.

STATEMENT OF FACTS

A. Introduction

In the 18 terms of Court since Roth-Alberts [1/] was decided in June of 1957, the dockets and decisions of this Court have chronicled a major governmental struggle involving the public morals of this nation relating to human sexuality. In simple terms, that struggle can best be characterized as a confrontation between the constitutional powers of the government as a whole, embodied in the Tenth Amendment and commonly referred to as the police power, and the counter-

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1/ Roth v. United States, 354 U.S. 476, 1 L.Ed.2d 1498, 77 S.Ct. 1304 (1957).

vailing rights of the individual, set forth in the First Amendment. In the pattern which has evolved from those decisions, this Court, as the final arbiter in that struggle, has fashioned a procedural requirement to maintain the balance in that contest. As recently as this past 1974 October Term, Justice Blackmun, writing the majority opinion for five justices, in Southeastern Productions Ltd. v. Conrad, ___ U.S. ___, 43 L.Ed.2d 448, 95 S.Ct. ___ (March 18, 1975) ruled that minimal procedural safeguards had not been provided where the City of Chattanooga sought to deny the use of a municipal auditorium for presentation of the theatrical production "Hair". The central theme in all of these decisions [2/] has been, as stated by Justice Blackmun in Southeastern Productions, Ltd., supra, at page 460, that:

> "a prompt final judicial determination must be assured".

While this procedural requirement of a "prompt judicial determination" has always been discussed

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2/ Southeastern Promotions, Ltd. v. Conrad, ___ U.S. ___, 43 L.Ed.2d 448, 95 S.Ct. ___ (1975); Freedman v. Maryland, 380 U.S. 51, 13 L.Ed.2d 649, 85 S.Ct. 734 (1965); United States v. Thirty seven Photographs, 402 U.S. 363, 28 L.Ed.2d 822, 91 S.Ct. 1400 (1971); Blount v. Rizzi, 400 U.S. 410, 27 L.Ed.2d 498, 91 S.Ct. 423 (1971); Teitel Film Corp. v. Cusack, 390 U.S. 139, 19 L.Ed.2d 966, 88 S.Ct. 754 (1968).

in the framework of "prior restraint" and the "First Amendment" rights of the individual to free speech in the marketplace of ideas, there is no reason to believe such procedural requirement does not, for the same reason, also bind the state system where the same claim is presented by the community itself, at the instance of representative government. It would seem self-evident that "prior restraint" and "free speech" are not the exclusive province of the individual, but apply equally as well in the latter case of representative government, for it is only through the judicial system that the community itself can "speak" collectively, so as to reject that which is offensive to "public morality". 3/ This petition asserts such a right and raises a question as to whether or not we have been traveling upon a one-way street.

3/ The fact that the Buena Vista Cinema, has been permitted to exhibit since June 28, 1974, daily and uninterruptedly, over 58 programs, containing 116 hard core pornographic films, becomes autoptical proof that such conduct is acceptable to the community, since the existence of such an operation is a matter which (1) is readily perceived by the senses and (2) as such, assumes the form of "verbal conduct". See 4 Wigmore § 1150 discussing "autoptic proference", and Justice Brennan, speaking for this Court in Sam Ginsberg v. N.Y., 390 U.S. 629 at 642 fn. 10 (1968). The judicial system in California, by its refusal to provide a prompt forum for the issues herein presented, has effectively imposed a "prior restraint" on the Community's right to "speak out".

B. The Legislative Inquiry and Its Determination.

On June 12, 1974, the Real Party in Interest, Stephen E. Tillander of 8016 Radford Avenue, North Hollywood, California, 91605, filed an application for a business license for the "Buena Vista Cinema" at 1345 East Huntington Drive, Duarte, California, and on June 28, 1974, business license No. 477 was issued by the City of Duarte to Stephen E. Tillander, d.b.a. Buena Vista Cinema, 1345 East Huntington Drive, Duarte, California. On July 3, 1974, business license No. 728 was reissued to the same person.

The "Buena Vista Cinema" is a small 80' x 43' theater (capacity of 130 seats) constructed in March of 1972, as a part of a small shopping center complex, located at the corner of Buena Vista and Huntington Drive in Duarte, California. The shopping center contains such family-centered stores as "Von's", "Thrifty Drug Store", and "Sprouse-Ritz". The theater itself adjoins the Thrifty Drug Store.

Beginning on or about June 28, 1974, and repeatedly and continuously thereafter, up to and including November 27, 1974, the date of the filing of the Complaint below, Stephen E. Tillander, doing business as "Buena Vista

Cinema", hereinafter referred to as "Buena Vista Cinema", publicly exhibited, or caused to be exhibited as a regular course of business, and possessed for the purpose of such exhibition, a group of 22 motion picture films, which were exhibited continuously in eleven separate programs of two films each. (A list of these films, together with the dates on which they were exhibited is attached hereto as Appendix B.)

Pursuant to its lawful powers under Article 11, Section 7 of the California Constitution, Government Code Sections 38771, 38773, 38773.5, Civil Code Sections 3479, 3480, 3491, and 3494, and Code of Civil Procedure Section 731, the City Council of the City of Duarte did, on September 10, 1974, pass and adopt Ordinance No. 367 which became effective on the 12th day of October, 1974, and did supersede the same with Ordinance No. 369, adopted as an emergency ordinance on the 12th day of November, 1974, which became effective immediately on its adoption. Duarte Ordinance No. 369 [4/] defines the term "lewd" film

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4/ A copy of Duarte City Ordinance 369 appears at Exhibit A-1 to the First Petition for Writ of Mandate in L.A. 30396, 2d Civ. 45526. Said Exhibit A-1 also appears in this record as a part of Exhibit 1 to the Petition (Third) for Writ of Mandate on file herein. See Statement of Facts herein at page 19 infra.

in terms of the Miller v. California requirements and declares that any and every place in the City of Duarte where "lewd" films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition is a public nuisance, and that any and every "lewd" film which is publicly exhibited or possessed for such purpose in the City of Duarte is a public nuisance per se; and establishes procedures for the abatement of such public nuisances in the City of Duarte.

At its regular meeting on November 26, 1974, the City Council of the City of Duarte did meet and, pursuant to Ordinance No. 369, did consider evidence in the form of six volumes of time-motion studies of 22 of the above described films.

By affidavit, the City Council was informed that said time-motion studies had been prepared from films exhibited at the Buena Vista Cinema and contained a chronological series of photographs, timed in their relative order of appearance, which photographs fairly and accurately depict the sexual conduct visually portrayed on the motion picture screen of the "Buena Vista Cinema" during the above mentioned dates.

Pursuant to Ordinance No. 369, the City Council of the City of Duarte did, on November

26, 1974, act by Resolution No. 74-32,[5/] and did in Sections 3 and 4 thereof, find and declare the "Buena Vista Cinema" to be a public nuisance and each of the films listed in Appendix "A" to be a "lewd" film and a public nuisance per se under such ordinance.

Pursuant to said Resolution No. 74-32, the City Council of the City of Duarte did, in Section 5 thereof, inform and give notice to all persons having a legal or equitable interest in the "Buena Vista Cinema" of the Council's findings of fact as to the public nuisances involved, and did order such persons to summarily abate the same upon receiving notice, and in Section 7 of said Resolution, did provide for service of notice on such persons.

Pursuant to Sections 6 and 7 of said Resolution No. 74-32, the City Council of the City of Duarte did order Petitioner William Camil as the City Attorney of Duarte to file a civil action, pursuant to Code of Civil Procedure, Section 731, seeking (A) abatement of such public nuisances in judicial proceedings, as required

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5/ A copy of Resolution No. 74-32 appears at Exhibit A-2 to the First Petition for Writ of Mandate in L.A. 30369, 2d Civ. 45526. Said Exhibit A-2 also appears in this record as a part of Exhibit 1 to the Petition (Third) for Writ of Mandate on File herein. See Statement of Facts herein at page 19 infra.

by Section 6 of Duarte Ordinance No. 369; (B) a declaratory judgment (1) that the above described films were "lewd" films under Ordinance No. 369, and Resolution No. 74-32, and as such, public nuisances per se, and (2) that the "Buena Vista Cinema" was a public nuisance under Duarte Ordinance No. 369 and Resolution No. 74-32; and (C) an accounting, forfeitures and award of costs as are authorized by Duarte Ordinance No. 369.

C. The Judicial Relief Sought

On November 27, 1974, Petitioner William Camil, as City Attorney of the City of Duarte, alleging the above facts, commenced a civil action in the Superior Court of Los Angeles County 6/ pursuant to the authority of Code of Civil Procedure Section 731, with the filing of the following:

1. A Complaint in Equity to Abate a Public Nuisance under Duarte City Ordinance No. 369, and for a Declaratory Judgment and Forfeitures, being People of the State of California ex rel William Camil, City Attorney of the City of

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6/ A copy of the pleadings filed in Civil Action 107347 appears in this record as a part of Exhibit 1 to the Petition (Third) for Writ of Mandate in 2d Civ. 46869 on file herein. See Statement of Facts herein at page 19 infra.

Duarte, California vs. Buena Vista Cinema, et.al., No. C-107347.

2. Points and Authorities in Support of Complaint in Equity to Abate a Public Nuisance and for a Declaratory Judgment and Forfeitures.

As part of the relief in said civil action, Petitioner, as the City Attorney of the City of Duarte, sought to abate as a public nuisance (1) the Buena Vista Cinema, 1345 East Huntington Drive, Duarte, California, in Los Angeles County, wherein lewd and obscene films have been and are now being exhibited continuously since on or about June 28, 1974, and (2) the positive motion picture prints used by the operators of said theater as the means of exhibiting said motion picture films at that theater. The time-motion studies of each of the abovementioned 22 films which were considered by the City Council of Duarte, were pleaded specially as exhibits to said Complaint and incorporated therein by reference. A summons was issued and service of process was commenced as to all defendants named in said action.

The Complaint alleged that each of the said 22 films was a "lewd" film as that term is defined in Duarte Ordinance No. 369, in that each is a film which (a) the average person, applying contemporary community standards would find, when

considered as a whole, appeals to the prurient interest, and (b) depicts or describes patently offensive representations or descriptions of (1) ultimate sexual acts, normal or perverted, actual or simulated, and (2) masturbation, and lewd exhibition of the genitals and genital area, and (c) when considered as a whole, and in the context in which it is used, possesses no serious literary, artistic, political, or scientific value. It was further alleged that under Duarte Ordinance No. 369 and Resolution No. 74-32 each of such lewd films is a public nuisance per se and the building structure known as the "Buena Vista Cinema" is a public nuisance, being a place in the City of Duarte where "lewd" films are publicly exhibited and possessed for such exhibition as a regular course of conduct.

On December 2, 1974, Petitioner filed a motion for Preliminary Injunction in C.A. 107347 and noticed the same for a hearing on December 16, 1974. Petitioner also filed a notice of lis pendens in the County Recorders office giving notice of the pendency of C.A. 107347.

A copy of the abovementioned Summons, Complaint, Points and Authorities, Motion for Preliminary Injunction and Notice of Motion for Preliminary Injunction in People of the State of California ex rel William Camil, City Attorney of Duarte

v. Buena Vista Cinema, et.al., No. C-107347, was served on the following parties on the following dates:

Dunn Properties Corporation
December 4, 1974;

Diversified Realty Fund "A"
December 5, 1974;

Title Insurance and Trust Company
December 4, 1974;

Stephen E. Tillander, dba Buena Vista Cinema
December 6, 1974;

On November 27, 1974, a Subpoena Duces Tecum was issued and duly served on the projectionist and person in charge of the Buena Vista Cinema, requiring that the films, "After School Exams" and "Gina, the Foxy Chick" be brought to Court at the hearing set for December 16, 1974. On December 4, 1974, a Subpoena Duces Tecum was issued and duly served on John Doe 2, the person in charge of the Buena Vista Cinema, requiring that the films "The Cheaters" and "Busy Bodies" be brought to Court at the hearing set for December 16, 1974.

On December 11, 1974, Real Parties in Interest Stephen E. Tillander and Buena Vista Cinema appeared in said actions by attorney Jonathan Bailey Lappen and filed Points and Authorities in Opposition to the Motion for Preliminary Injunction in No. C-107347.

On December 17, 1974, the Petitioner as Plaintiff in Civil Action C-107347 served and filed the following papers on all parties to the actions:

1. Memorandum of Points and Authorities in reply to Real Party in Interest Tillander's Points and Authorities in Opposition to the Motion for a Preliminary Injunction in No. C-107347.

The Petitioner's Motions for a Preliminary Injunction in Civil Action 107347 came on for a hearing in Department 3 of the Los Angeles Superior Court before the Honorable Max F. Deutz on Tuesday, December 17, 1974, and Thursday, December 19, 1974, at which time Jonathan Bailey Lappen appeared as counsel for Real Parties in Interest, Stephen E. Tillander and Buena Vista Cinema. On December 19, 1974, on Petitioner's Motion, Judge Deutz entered an order consolidating both actions (Nos. C-107347 and C-107771)[7/] for all purposes. An oral stipulation was entered into between Petitioner and Real Parties in Interest Stephen E. Tillander and Buena Vista Cinema

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7/ Civil Action 107771, entitled City of Duarte, a Municipal Corporation and James J. Coughlin v. Buena Vista Cinema et al. was based upon the California Red Light Abatement Statute. A copy of the pleadings in Civil Action 107771 appears in this records as a part of Exhibit 1 to the Petition (Third) for Writ of Mandate in 2d Civ. 46869 on file herein. See Statement of Facts herein at page 19 infra.

in said actions, wherein it was agreed that a general demurrer should be deemed to have been filed by Real Parties in Interest Stephen E. Tillander and Buena Vista Cinema on all grounds stated in the Points and Authorities previously filed by said Real Parties in Interest in opposition to the Motion for Preliminary Injunction.

At the hearing on Petitioner's Motion for Preliminary Injunction in Civil Actions 107347 and 107771 on Thursday, December 19, 1974, Petitioner filed with the Court additional affidavits and exhibits regarding the nature of the films being exhibited at the Buena Vista Theatre subsequent to the action of the City Council on November 26, 1974. (A list of these affidavits and exhibits is attached hereto as Appendix C.)

On the same date, Petitioner also filed with said Court, a certified copy of the Police Record before the City Council and considered by them prior to the adoption of Duarte City Council Resolution No. 74-32, reciting a criminal charge filed on the films "Sexual Freedom in the Ozarks" and "How to Bury a Stiff", which were exhibited at the Buena Vista Cinema on July 30, 1974, and a guilty plea entered to the charge on Oct. 29, 1974.

On Thursday, December 19, 1974, further

exhibits were received in evidence by the trial court during the presentation of the Petitioner's case in chief on the aforementioned Motion for Preliminary Injunction. (A list of these exhibits is attached hereto as Appendix D.) Real Parties in Interest offered no counter-affidavits.

At the conclusion of oral arguments on Thursday, Dec. 19, 1974, Los Angeles Superior Court Judge Max F. Deutz ruled orally from the bench. In his oral rulings, Judge Deutz denied Petitioner's Motion for a Preliminary Injunction and sustained the Defendants' demurrer to the complaints in CA 107347 and 107771 on the grounds that, under the law stated in Harmer et al. v. Tonylyn Prod. Inc. et al., 23 Cal.App.3d 941, 100 Cal. Rptr. 576 (Mar. 21, 1972), Petitioners could not state a cause of action under either the Red Light Abatement Act or Civil Code sections 3479 and 3480 (common law public nuisance). Judge Deutz also ruled that, under Lancaster v. Municipal Court, 6 Cal.3d 805, 100 Cal.Rptr. 609 and Harmer et.al. v. Tonylyn Prod., Inc., et.al., supra, Petitioner could not state a cause of action as to C.A. 107347, under Duarte City Ordinance 369, because of the combination of the law stated in the Harmer case and the doctrine of preemption.

On Dec. 27, 1974, Petitioner joined with

others to file its original Petition in the California Supreme Court, entitled People of the State of California ex rel William Camil, City Attorney of the City of Duarte, Petitioner, vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema et al., Real Party in Interest; and City of Duarte, a Municipal Corporation, and James J. Coughlin, Petitioners, vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema et al., Real Party in Interest, L.A. 30396 in which copies of the abovementioned pleadings and papers filed in the two consolidated cases were incorporated by reference as Exhibits A-1 through A-18 (C.A. 107347) and B-1 through B-9 (C.A. 107771) to the petition. Pursuant to an order of Superior Court Judge Max F. Deutz, dated Dec. 26, 1974, the time-motion studies of the aforementioned 26 hard-core pornographic films were also filed with the California Supreme Court. On the same date, the California Supreme Court acted on the petition and ordered the same and the time-motion studies of the 26 hard-core motion picture films transferred to the Court of Appeal, Second Appellate District, where such case was filed as 2d Civ. 45526.

On December 27, 1974, the Court of Appeal,

Second Appellate District, Third Division, filed its opinion in Busch et al. v. Projection Room Theater et al., 44 Cal.App.3d 111, 118 Cal.Rptr. 428, which held, contrary to Harmer v. Tonylyn Productions, Inc., supra, that (1) "the continuous operation of theaters specializing in pornographic presentations (obscene motion pictures). . ." "is of a nature which, it could be found, 'affects at the same time an entire community,' " 118 Cal.Rptr. 428 at 431 and 434, and (2) that the "exhibition of the obscene material described in the complaint (time-motion studies of 10 films) constitutes a nuisance because it is 'indecent or offensive to the senses' in the sense in which those terms are used in the nuisance statutes'", and (3) that the allegations of the complaints were sufficient to bring the alleged activity of defendants within the definition of public nuisance and that . . ."Civil Code Sections 3479 and 3480 established plaintiffs' standing under section 731 of the Code of Civil Procedure to bring a civil action to enjoin the public nuisance involved".

On January 9, 1975, Petitioner, as the plaintiff in Civil Action 107347 filed a Notice of Motion for a Reconsideration of the Trial Court's December 19, 1974 Oral Ruling from the Bench on the Stipulated Demurrer and Plaintiffs' Motion

for a Preliminary Injunction in the consolidated cases, People of the State of California ex rel William Camil, City Attorney of the City of Duarte v. Buena Vista Cinema et al., CA 107347 and City of Duarte, A Municipal Corporation, and James J. Coughlin v. Buena Vista Cinema et al., CA 107771 and noticed the same for January 24, 1975.

On January 15, 1975, the Court of Appeal, Second Appellate District, notified Petitioner's counsel by a postcard that the Petition for a Writ of Mandate in People of the State of California ex rel William Camil, City Attorney of the City of Duarte, Petitioner vs. Superior Court of the State of California for the County of Los Angeles, Respondent and Buena Vista Cinema et al., Real Party in Interest; and City of Duarte, A Municipal Corporation and James J. Coughlin, Petitioner vs. Superior Court of the State of California for the County of Los Angeles, Respondent and Buena Vista Cinema et al., Real Party in Interest, L.A. 30396 (2d Civ. 45526) was denied.

On January 24, 1975, Los Angeles Superior Court Judge Max F. Deutz heard oral argument on the aforementioned Motion for Reconsideration in Civil Action 107347 and Civil Action 107771. At the conclusion of arguments, Judge Deutz ruled

that the Court did have jurisdiction of the two civil actions in the Trial Court below by reason of the failure to execute the written Order of Dismissal required by Civil Code of Procedure, Section 581(d) and ordered the Clerk not to file an Order of Dismissal but refused to act further on Petitioner's Motion for Preliminary Injunction and took the matter under submission. During the oral arguments on January 24, 1975, Judge Deutz indicated a general unwillingness to reset the matter for a hearing on the Motion for a Preliminary Injunction until the California Supreme Court should rule on the Petition for Hearing in Busch et al. v. Projection Room Theater, et al., supra.

On January 27, 1975, Petitioner herein filed a Petition for Hearing in the California Supreme Court on the Denial of the Petition for Writ of Mandate in People of the State of California ex rel William Camil, City Attorney of the City of Duarte, Petitioner, vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema et al., Real Party in Interest; and City of Duarte, A Municipal Corporation and James J. Coughlin, Petitioners vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema et al., Real Party in

Interest, L.A. 30396 (2d Civ. 45526). In said petition, Petitioner herein informed the California Supreme Court that, subsequent to the denial of the petition for Writ of Mandate by the Court of Appeal on January 15, 1975, trial court Judge Max F. Deutz had heard oral argument on Plaintiffs' Motion for Reconsideration and on January 24, 1975 had ordered the Clerk not to file an Order of Dismissal and had taken the matter under submission. On February 13, 1975, the Court denied the Petition for a Hearing.

On or about Feb. 27, 1975, the California Supreme Court handed down its order extending its jurisdiction to consider the Petition for Hearing in Busch et al. v. Projection Room Theater et al. for 30 days to March 27, 1975.

On February 21, 1975, the plaintiffs in Civil Action 107347 and Civil Action 107771 filed a second Notice of Motion for a Preliminary Injunction in People of the State of California ex rel William Camil, City Attorney of the City of Duarte v. Buena Vista Cinema et al., C.A. 107347 and City of Duarte, A Municipal Corporation and James J. Coughlin v. Buena Vista Cinema et al., C.A. 107771 and noticed the same for March 3, 1975 at 2:00 P.M.

On March 3, 1975, the Petitioner's Motions for a Preliminary Injunction in Civil Actions

107347 and 107771, came on for a rehearing before Judge Deutz in Department 54, with defense attorney Jonathan Lappen appearing for defendant Buena Vista Cinema and defendant Stephen E. Tillander. At such hearing, further exhibits were received into evidence, being time-motion studies of the 12 films exhibited at the Buena Vista Cinema subsequent to the first hearing on the motion for a preliminary injunction on December 19, 1974 up to and including March 3, 1975, the date of such hearing. (A list of said exhibits is attached hereto as Exhibit E.)

Upon the conclusion of the hearing on March 3, 1975, Judge Deutz sustained the Real Parties in Interest demurrers to the cause of action based upon the Red Light Abatement Act in City of Duarte, A Municipal Corporation and James J. Coughlin v. Buena Vista Cinema et al., C.A. 107771, without leave to amend. The Court also sustained the Real Parties in Interest's demurrer to the cause of action based upon Duarte City Ordinance No. 369 in People of the State of California ex rel William Camil, City Attorney of the City of Duarte v. Buena Vista Cinema et al., C.A. 107347, with leave to amend as to said cause of action. The Court held the complaint "sufficient to get your foot in the door (under Busch et al. v. Projection Room Theater et al., supra.)" but "(not) an

adequate complaint in order to go forward to trial." Judge Deutz also denied Petitioner's Motion for a Preliminary Injunction. Judge Deutz stated that ". . . the Court has expressed its opinion before from the time and motions study, I think it is quite clear that there is no redeeming social significance of any sort to these films and that they are obscene. I don't know what will happen on the trial of the case, but it is quite likely that an injunction will finally issue, but this is not the time or place for it. . ." At the previous hearing on the motion for preliminary injunction on December 19, 1974, Judge Deutz said as to those 26 films ". . . from my preliminary observation it appears to me what we are dealing with here is definitely hard-core pornography. I haven't heard the sound tracks, and I haven't seen the actual motion picture film. But I have seen the timed sequences, and it is clear in my mind that this is probably hard-core pornography, but I am not making a finding on that because I haven't everything before me. . ." When Counsel for Petitioner restated his argument that, were the Red Light Abatement Act applicable, "the mandate of the State Legislature would require relief to be granted on the motion for preliminary injunction", the Court answered "Well, I understand your point, but the Harmer case and the Busch case

both held that the Red Light Abatement Act didn't apply."

Pursuant to Los Angeles County Superior Court Judge Max Deutz' ruling of March 3, 1975, that Petitioner had stated a claim under Civil Code Sections 3479 and 3480, Petitioner herein, on March 10, 1975, filed its First Amended Complaint[8/] in People of the State of California ex rel William Camil, City Attorney of the City of Duarte, California vs. Buena Vista Cinema, being a building structure containing approximately 3,440 square feet (80' x 43'), located on real property commonly known as 1345 East Huntington Drive, Duarte, California; Stephen E. Tillander, dba Buena Vista Cinema; Diversified Realty Fund "A", a Limited Partnership; Title Insurance and Trust Company, a California corporation; Dunn Properties Corporation, a California Corporation; Jess Wilder; Inland Empire Enterprises, Inc., a California Corporation; Philip A. Fishman; North American Theatre Association, Inc., John Does 1 to 10, No. C-107347.

On April 3, 1975, Petitioner herein (People of the State of California ex rel William Camil,

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8/ A copy of the First Amended Complaint in Civil Action 107347 is a part of the record herein as Appendix B-1 to the Petition (Third) for Writ of Mandate in 2d Civ. 46869 on file herein.

as City Attorney of the City of Duarte, California) again joined with others to file a second verified Petition for Writ of Mandate in the Court of Appeal in the same causes, entitled People of the State of California ex rel William Camil, City Attorney of the City of Duarte, Petitioner vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema, et al., Real Party in Interest; and City of Duarte, A Municipal Corporation, and James J. Coughlin, Petitioner vs. Superior Court of the State of California for the County of Los Angeles, Respondent, and Buena Vista Cinema et al., Real Party in Interest, 2d Civ. No. 46061. Said petition sought an alternative and preemptory writ requiring the Los Angeles County Superior Court to show cause why it should not be required to vacate its order of March 3, 1975, which had denied the plaintiffs' Second Motion for a Preliminary Injunction and, upon a reconsideration of its original ruling on the defendants' demurrers, had again sustained the demurrers to the aforementioned causes of action pleaded in Civil Action 107347 (Duarte Ordinance No. 369) and Civil Action 107771 (Red Light Abatement Act). The Second Petition for a Writ of Mandate in this litigation (2d Civ. 46061) was denied by the Court of Appeal on April 8, 1975.

Petition for Hearing After Denial by the Court of Appeal was denied by the California Supreme Court on May 8, 1975.[9/]

On April 4, 1975, Real Parties in Interest, Stephen E. Tillander dba Buena Vista Cinema, Jess Wilder, Inland Empire Enterprises, Inc., Philip A. Fishman and North American Theatre Association, Inc., appeared by Attorney Jonathan Lappen and filed a demurrer to the First Amended Complaint in People of the State of California ex rel William Camil, City Attorney of the City of Duarte, California vs. Buena Vista Cinema, being a building structure containing approximately 3,440 square feet (80' x 43'), located on real property commonly known as 1345 East Huntington Drive, Duarte, California; Stephen E. Tillander, dba Buena Vista Cinema; Diversified Realty Fund "A", a Limited Partnership; Title Insurance and Trust Company, a California Corporation; Dunn Properties Corporation, a California Corporation; Jess Wilder; Inland Empire Enterprises, Inc., a California Corporation; Philip A. Fishman; North American Theatre Association, Inc., John Does 1 to 10, Civil Action 107347 on the grounds that the Court has no jurisdiction of the subject of the cause

9/ A copy of the Second Petition for Writ of Mandate in 2d Civ. 46061 is a part of the record herein as Exhibit 2 to the Petition (Third) for Writ of Mandate in 2d Civ. 46869 on file herein.

of action pleaded and that the pleading did not state facts sufficient to constitute a cause of action, and noticed the same for a hearing in Department 84 on April 17, 1975.

In their points and authorities the said Real Parties in Interest argued that, inasmuch as the California Supreme Court had granted a hearing in Busch et. al. v. Projection Room Theatre on March 10, 1975 (which date was seven days subsequent to the ruling of Superior Court Judge Max Deutz upholding Civil Action 107347 on the sole authority of Busch) under Rule 977 of the California Rules of Court, Busch was no longer controlling authority and the general demurrer to the first amended complaint must now be sustained on the grounds that Harmer v. Tonylyn Productions, Inc., 23 Cal. App.3d 941 was again the only ruling precedent.

At the hearing on the aforementioned demurrers before Los Angeles County Superior Court Judge August Goebel in Department 84 on April 17, 1975, petitioner argued that, at a minimum, the grant of a hearing in the Busch case also effectively removed any vestige that Harmer might have had as a binding precedent and that, in such case, the trial court must decide the matter anew under the rationale expressed in Busch or that expressed in Harmer. Against petitioner's objections, Los

Angeles County Superior Court Judge August Goebel placed the demurrer off calendar to await the Court's decision in Busch et al. v. Projection Room Theater et al., supra.

On May 2, 1975, Petitioner herein as the Plaintiff in People of the State of California ex rel William Camil, City Attorney of the City of Duarte, California v. Buena Vista Cinema, et al., C.A. No. 107347, filed a Notice of Appeal from Judge Deutz' Order dated March 12, 1975 denying Plaintiff's Motion for a Preliminary Injunction and sustaining the defendants' demurrer without leave to amend as to the claim based upon Duarte City Ordinance No. 369. On May 12, 1975, Petitioner filed a Notice to Prepare the Clerk's Transcript on such appeal.

Similarly, on May 2, 1975, the City of Duarte, A Municipal Corporation, and James J. Coughlin, as Plaintiffs and Appellants in City of Duarte, A Municipal Corporation and James J. Coughlin v. Buena Vista Cinema, et. al., C.A. No. 107771, filed a Notice of Appeal from Judge Deutz' order of March 3, 1975 denying Plaintiffs' Motion for Preliminary Injunction and from the Order of Dismissal pursuant to section 581.3 of the Code of Civil Procedure entered on March 3, 1975, following Superior Court Judge Max F. Deutz' sustaining defendants' demurrer, without leave to amend as

to the claim based upon Civil Code Sections 3479 and 3480 and Penal Code Sections 11225 et. seq., and on May 12, 1975 filed a Notice to Prepare the Clerk's Transcript in such appeal.

D. The Bankruptcy Action

On April 3, 1975, Curtis B. Danning, acting as Controller on behalf of United Professional Planning, Inc., Debtor and general partner of the limited partnership, Diversified Realty Fund "A" (real party in interest herein) filed a complaint in the United States District Court for the Central District of California entitled Curtis B. Danning, Controller, Plaintiff, v. City of Duarte, a Municipal Corporation; James J. Coughlin; People of the State of California, ex rel William Camil, City Attorney of the City of Duarte, California and James J. Clancy, Defendants, In re United Professional Planning, Inc., a California Corporation, Debtor and In re United Professional Enterprises, Inc., a California corporation, Debtor, No. 72-8654-R and No. 72-8653-R to enjoin the state court proceedings in C-107347 and C-107771. Hearings were conducted in the Bankruptcy Court in that matter on April 11, 1975 and May 8, 1975, in connection with Plaintiffs order to show cause why a

Preliminary Injunction should not be issued and Defendants' motion for dissolution of a temporary restraining order therein granted, on the grounds of lack of subject matter jurisdiction. On June 25, 1975, Bankruptcy Court Judge William J. Lasarow filed a Memorandum and Decision and Order in which he held that the Bankruptcy Court had no jurisdiction in the matter since the record title holder of the real estate involved, the limited partnership, Diversified Realty Fund "A", (and real party in interest herein), had never been officially adjudged a bankrupt or a debtor in the Bankruptcy Court. Judge Lasarow did exercise the Bankruptcy Court's limited emergency jurisdiction to restrain the defendants (Petitioner herein) for a period of 30 days until and including July 25, 1975 from proceeding in the State Court against the limited partnership, Diversified Realty Fund "A" (real party in interest herein) to permit the filing of a simple bankruptcy or debtor's petition as to the limited partnership, Diversified Realty Fund "A", by an interested party. Judge Lasarow held such filing to be a prerequisite to the Court's jurisdiction and a hearing by the Bankruptcy Court on the complaint to enjoin the state court action. On July 2, 1975, Curtis B. Danning and United Professional Planning, Inc., Debtor, filed a notice of appeal to the District Court

from the dismissal of Plaintiff's complaint to enjoin the State Court Prosecution. Said restraining order lapsed and later was reinstated and continued in effect by Judge Lasarow until Sept. 12, 1975, when another order was entered ordering that the said restraining order be dissolved as of 12:01 A.M. on Oct. 23, 1975. The decision of the bankruptcy court on Sept. 12, 1975 required Diversified Realty Fund "A" to appear in response to the State Court process which had been served on them on December 5, 1974. 10/

E. Third Petition For Writ of Mandate in 2d Civ. 46869.

On August 1, 1975, Petitioner herein filed its Third Petition for Writ of Mandate in the California Supreme Court under L.A. file No. 30497. Petitioner also lodged with said petition the following exhibits, which were pleaded by incorporation therein:

1. Exhibit 1 -- 8½" x 14" bound volume (blue) containing papers filed in First Petition for Writ of Mandate 2d Civ. 45526;

2. Exhibit 2 -- 8½" x 11" bound volume

10/ On Dec. 2, 1975, and against Petitioner's objections, the demurrer of Diversified Realty Fund "A" was also put off calendar.

(green) containing papers filed in Second Petition for Writ of Mandate 2d Civ. 46061;

3. Exhibit 3 -- Time-motion studies of 40 programs (85 films) exhibited at the Buena Vista Cinema during the period July 15, 1974 - July 30, 1975.

4. Exhibit 4 -- 8½" x 11" bound volume (green) containing original of deposition of North American Theatre Association, Inc. taken April 30, 1975 and adjourned on that date;

5. Exhibit 5 -- 8½" x 14" bound volume (blue) containing papers filed in U.S. District Court Bankruptcy Action Danning v. City of Duarte et al., No. 72-8654-R and 72-8653-R.

On August 4, 1975, the petition was transferred to the Court of Appeal, Second District, and on Aug. 12, 1975 the petition was denied. On Aug. 19, 1975, petitioner filed a petition for hearing in the California Supreme Court which, on September 10, 1975 denied the same.

REASONS FOR GRANTING THE WRIT

I

THE CITIZENS OF THE CITY OF DUARTE AS CITIZENS OF THE U.S. HAVE A FEDERALLY PROTECTED RIGHT TO LIVE IN A COMMUNITY WHOSE PUBLIC MORALS, MORAL VALUES AND ENVIRONMENT ARE FREE FROM THE DEGRADING AND CORRUPTING INFLUENCES OF PATENTLY HARD-CORE PORNOGRAPHY.

Assuming that the California Judiciary, by its inaction herein, were holding that the public exhibition for profit of the hard-core sexual conduct specifically alleged in the Complaint below, when performed as a regular course of conduct, in a closed theater for viewing by persons who pay an admission price and have entered the theater for that purpose, were protected by California law, such would be unlawful under the Federal Constitution and Federal Statutes, in that such would deprive the citizens of the City of Duarte, California, as citizens of the United States of

(1) due process of law and equal protection of the law, and

(2) the police power and "home rule" authority which is inherent in municipal authority, and

(3) one of the fundamental rights essential to the concept of well-ordered liberty; namely, the right to enjoy "common decency" and to live in a community whose public morals, moral values and environment are free from the illegal, degrading and corrupting influences of such patently hard-core pornography.

A. Where Commercial Vice Is Involved, A City's Power To Abate The Same Is Inherent, And Plenary, And May Not Be Interferred With.

"The power to determine the question of what will injuriously affect the public is lodged with the legislative branch of the Government." Mugler v. Kansas, 123 U.S. 205 at 210 (Dec. 5, 1887). A legislative act or judicial ruling which would restrict a municipality's police power to legislate on those matters considered necessary to safeguard public morality would constitute an unconstitutional abridgment of fundamental rights under the federal constitution. Mugler v. Kansas, 123 U.S. 205 at 210, 211. See also Stone v. Mississippi, 101 U.S. 816, where the United States Supreme Court noted:

> "no legislature can bargain away the public health, or the public morals. The people themselves cannot do it, much less their servants. . . government is organized with a view to their preservation, and cannot devest itself of the power to provide for them".

The power being exercised by the City of Duarte is one of the most basic powers of local government - the power possessed by municipal government in aid of its duty to protect the public morals of the local community against that type of public conduct which is regarded as being malum in se. In addressing himself to the public morals issue and the pre-eminent

power of local government to control the same, Woods describes the danger as being in the nature of a "nuisance per se." See "The Law of Nuisances" by H.G. Wood, sections 23 and 24, at pages 45-46:

> "Section 23. Acts affecting public morals, public nuisances per se, when. -There are classes or kinds of business which are nuisances per se, and the very fact that they are carried on in a public place is prima facie sufficient to establish the offense. But in such cases, if the respondent questions that the use of his property in the manner charged in the indictment produces the effects set forth therein, and introduces evidence to sustain his position, it then becomes necessary to prove that the effects are such as are charged. But there are a class of nuisances arising from the use of real property and from one's personal conduct that are nuisances per se, irrespective of their results and location, and the existence of which only need to be proved in any locality, whether near to or far removed from cities, towns, or human habitations, to bring them within the purview of public nuisances. This latter class are those intangible injuries which affect the morality of mankind, and are in derogation

of public morals and public decency.

Section 24. Wrongs malum in se. - This class of nuisances are of that aggravated class of wrongs that, being malum in se, the courts need no proof of their bad results and require none. The experience of all mankind condemns any occupation that tampers with the public morals, tends to idleness and the promotion of evil manners, and anything that produces that result finds no encouragement from the law, but is universally regarded and condemned by it as a public nuisance." (Our emphasis.)

That municipal power is inherent in government itself and is so basic that its grant of authority is said to be "implied", and to flow from the Common Law rather than from "express" provisions in the City's Charter or the General Laws of the State. See "The Law of Nuisances", Woods, Section 743, at page 972:

"Section 743. No control over nuisances without special power. - Therefore, a municipal corporation has no control over nuisances existing within its corporate limits except such as is conferred upon it by its charter or by general law. There can be no question, however, but that where

> a nuisance exists within its corporate limits that is clearly a nuisance at common law or by statute, which is detrimental to the health of the inhabitants, it may be abated by the authorities, but it must be a nuisance at common law and one which any person injured thereby might lawfully abate of his own motion, or in the absence of express or implied authority given, the removal or abatement of the nuisance would be unlawful. Where the thing abated is clearly a nuisance, and one which affects the health of the city, the abatement may be made by the authorities or by any person injured thereby. The common law in such a case comes in aid of the authorities, and they are justified in the act, not because they are officials of the city, but because they are citizens injured by the thing abated." (Our emphasis.)

Joyce, in his treatise "Law of Nuisance", Section 345, notes that this common law power entrusts the municipal corporation with not only the right but the obligation to remove the nuisance, at page 498:

> "The rule is declared to be settled, without dissent, that, without a special grant of authority, public corporations may, as a common law power, cause the abatement of

nuisances, and if the nuisance cannot otherwise be abated, may destroy the thing which constitutes it. And it is said that a municipal corporation has not only the right, but is also under the obligation, to remove nuisances which may endanger the health of its citizens; that it has the power to decide in what manner this shall be done; and that its decision is conclusive unless it transcends the power conferred by the charter or violates the constitution."

The importance of this municipal power was stressed by the United States Supreme Court in James Phalen v. The Commonwealth of Virginia, 12 L.Ed. 1030, 1033 (1850):

"The suppression of nuisances injurious to public health or morality is among the most important duties of government. . . ."

"It is a principle of the common law, that the king cannot sanction a nuisance. . . ."

B. The California Judiciary Have a Moral Responsibility As The Guardian of The Peoples' Morals.

It was long ago decided that the Courts in our Anglo-Saxon legal system are the guardian of the public morals. Rex v. Curl, 2 Strange 789

(1727), Sir Charles Sedley's Case, 1 SID 168. Where the legislature had bargained away that power, the California Court in Farmer v. Behmer, 100 P. 901 at 904 had the following to say:

> "It is a novel doctrine that the Legislature may empower a city by its charter to suspend the operation of general laws punishing crime. No one would for a moment contend that murder, manslaughter, larceny, burglary, or any other of the long list of crimes punishable by statute could be condoned or palliated by an ordinance regulating or licensing such offenses. The heinousness or degree of the crime can make no difference. The statute punishing the keeping of a house of prostitution as a crime can no more be suspended in its operation than any other criminal statute. . . ."

Since the legislatures are subject to censure by the California Courts for failing in their responsibility to safeguard the public morals, then certainly the legislature is entitled to expect that the Courts will reciprocate, and in performing their duties will accord to the term "lewdness" its plain meaning under the common law. See Stone v. Mississippi, supra.

II

THE CITIZENS OF THE CITY OF DUARTE "SPEAKING" THROUGH THEIR CITY COUNCIL HAVE LEGISLATIVELY DECLARED THE BUENA VISTA CINEMA OPERATION TO BE A PUBLIC NUISANCE. UNDER THE RATIONALE EXPRESSED BY THIS COURT IN SOUTHEASTERN PRODUCTIONS, LTD. V. CONRAD, THE CITY COUNCIL HAS BEEN DENIED THE "PROMPT JUDICIAL DETERMINATION" TO WHICH IT IS CONSTITUTIONALLY ENTITLED.

During the arguments in the Fanny Hill case on December 7, 1965, Justice Black interrogated the Deputy Attorney General of Massachusetts as follows: (see transcript at pages 34 - 35)

> "Mr. Justice Black: Let's get to the core of it. The core of the test is to arouse or stimulate a prurient interest. Who are the experts in that field?. . . ."
>
> "Mr. Justice Black: You recognize that that is a test in the Roth case?. . . ."
>
> "Mr. Justice Black: I understand that, but you are discussing the question now basically.
>
> "Mr. Cowin: Your Honor, I believe that would put the books into the hands of a more or less legislative determination as to what the community wants or does not want.
>
> "Mr. Justice Black: Maybe that is where it should be, in the legislative branch,

if the states have the power to suppress books they consider obscene. . . ."

In enacting Ordinance 369, the City Council of Duarte has utilized one of its most basic and historic powers as a City Council. See Point I, supra, at pages 34 to 41. Therein it has declared its local standards to be those set forth in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (June 11, 1973), and has applied those standards in a rationale manner. Out of deference to the First Amemdment, it has stayed its historic power in order to obtain ratification of its factual finding of a public nuisance from its co-equal in government--the Judiciary. Compare 106 Forsyth Corp. v. Bishop, 362 F.Supp 1389 (Feb. 2, 1972), affirmed in 106 Forsyth Corp. v. Bishop, 482 F.2d 280 (July 19, 1973), petition for certiorari denied in 106 Forsyth Corp. dba Paris Theater v. Bishop et al., ___ U.S. ___, 45 L.Ed.2d 696, ___ S.Ct. ___ (June 23, 1975).

In denying the City of Duarte a "prompt judicial determination" the California Judicial System has deprived Petitioner of fundamental constitutional rights to which it is entitled. See "Statement of Facts-Introduction" herein at pages 5 - 7, footnote 3 at page 7, and Southeastern Productions, Ltd. v. Conrad, ___ U.S. ___, 43

L.Ed.2d 448, 95 S.Ct. ___ (March 18, 1975). In support of its advocacy that the refusal of the judicial system to afford this legislative determination a "prompt judicial determination" was arbitrary and has assumed constitutional proportions, Petitioner has filed herewith as Exhibit "A" to this Petition for Writ of Certiorari (being in the nature of a "Brandeis Brief") a 4-1 reduction of the time-motion studies of the two films being exhibited at the Buena Vista Cinema on the date of filing of the Third Petition for Writ of Mandate in 2d Civ. 46869. These 4-1 reductions, which are representative of the films being exhibited, also appeared as a part of said petition at Appendix A-2, and the original exhibits themselves were lodged with the California Supreme Court as a part of Exhibit 3 (which contains time-motion studies of the 85 pornographic films exhibited at the Buena Vista Cinema during the period July 15, 1974-July 30, 1975). See Statement of Facts, supra, at page 34.

III

A MOTION PICTURE THEATER WHICH IS CLAIMING A RIGHT TO DO BUSINESS IN A CITY MAY NOT ASSERT A FIFTH AMENDMENT PRIVILEGE AND REFUSE TO PRODUCE THE FILMS WHICH IT IS EXHIBITING COMMERCIALLY AT THAT THEATER; NOR MAY A CORPORATE OPERATOR OF SUCH THEATER ASSERT SUCH PRIVILEGE AS TO THE RECORDS OF THE CORPORATION WHICH HAVE BEEN SUBPOENAED

FOR PRODUCTION AT THE DEPOSITION TO BE TAKEN OF THE CORPORATION.

A. The Fifth Amendment Privilege Is A Bar Against Compelling "Communications" Or "Testimony" But Does Not Preclude Compulsion Which Makes An Accused The Source of Real Or Physical Evidence In The Form Of Corporate Records.

U.S. v. Dionisio, 410 U.S. 1, 35 L.Ed.2d 67, 75, 93 S.Ct. 764 (Jan. 22, 1973). Couch v. U.S., 409 U.S. 322, 34 L.Ed.2d 548, 93 S.Ct. 611 (June 9, 1973).

B. The Privilege Against Self-Incrimination Applies Only To Natural Persons And Cannot Be Utilized By Or On Behalf Of A Corporation.

Wilson v. U.S., 221 U.S. 361, 55 L.Ed. 771, 31 S.Ct. 538, (1911). U.S. v. White, 322 U.S. 694, 88 L.Ed. 1542, 64 S.Ct. 1248 (1944). Brovelli v. Superior Court of Los Angeles County, 56 Cal.2d 524, 15 Cal.Rptr. 630, 633, 364 P.2d 462 (Aug. 28, 1961). People v. West Coast Show, Inc., 10 Cal.App.3d 462, 89 Cal.Rptr. 290, 297 (Apr. 12, 1970). Fielder v. Berkeley Properties Co., 23 Cal.App.3d 30, 44, 99 Cal.Rptr. 79, 80 (Jan. 25, 1972).

C. The Power To Compel The Production Of Corporate Records And Motion Picture Films Which Are Being Commercially Exhibited Arises Out of The Visitorial Powers Of Government i.e., The Inherent And Necessary Power of Federal And State Governments To Enforce Their Laws. Were The Cloak of the Privilege To Be Thrown Around These Impersonal Records And Documents, Effective Enforcement Of The Law Would Be Impossible.

Justice Molinari, speaking for the Court of Appeal, First District, Division One, in Fielder v. Berkeley, 23 Cal.App.3d 30, 45, 99 Cal.Rptr. 791 (Jan. 25, 1972) examined the rationale which underlies the compulsion to produce corporate records, as first voiced by this Court in U.S. v. White, 221 U.S. 361, 31 S.Ct. 538, 55 L.Ed. 771. Justice Molinari stated at page 45:

". . . In White, supra, the Court held that an officer of an unincorporated union has no constitutional right to refuse, when ordered by subpoena duces tecum, to produce books and records of the union in his possession. (322 U.S. at p. 704, 64 S.Ct. 1248.) The court observed that 'The constitutional privilege against self-incrimination

is essentially a personal one, applying only to natural individuals. (P. 698, 64 S.Ct. at p. 1251.)

". . . the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity. Boyd v. United States, 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746. (At p. 699, 64 S.Ct. at p. 1251.)

". . .The reason underlying the restriction of this constitutional privilege to natural individuals acting in their own private capacity is clear. The scope and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible. (Citations

omitted.) The framers of the constitutional guarantee against compulsory self-disclosure, who were interested primarily in protecting individual civil liberties, cannot be said to have intended the privilege to be available to protect economic or other interests of such organizations so as to nullify appropriate governmental regulations. (At p. 700, 64 S.Ct. at p. 1252; emphasis added.)

"Basically, the power to compel the production of the records of any organization, whether it be incorporated or not, arises out of the inherent and necessary power of the federal and state governments to enforce their laws, with the privilege against self-incrimination being limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records.' (At pp. 700-701, 64 S.Ct. at p. 1252; emphasis added.)"

D. Individuals Acting In a Representative Capacity For A Corporation Assume The Rights, Duties And Privileges Of The Legal Entity And Are Bound By The Corporation Obligations To Produce Corporate Records And May Not Claim The Personal Privilege Against Self-

Incrimination In Connection With Such Records.

In U.S. v. White, 322 U.S. 694, 88 L.Ed. 1542, 64 S.Ct. 1248 (1944) this Court said that individuals acting as representatives of the collective group assume the rights, duties and privileges of the artificial entity of which they are agents or officers and are also bound by its obligations. Therefore, said the Court, in their official capacity they have no privilege against self-incrimination.

E. An Officer, Agent Or Director Of A Private Corporation May Not Assert A Personal Privilege Against Self-Incrimination With Respect To The Production of Corporate Books And Records Even Though The Corporation Is A Mere Alter Ego And The Records May Tend To Incriminate Him Personally.

It has been uniformly held that the custodian's personal privilege against self-incrimination cannot be asserted with respect to the production of such documents, even though they might incriminate the custodian personally. Wilson v. U.S., 221 U.S. 361, 55 L.Ed.771, 31 S.Ct. 158, 538 (1911); Wheeler v. U.S., 226 U.S. 478, 57 L.Ed. 309, 33 S.Ct. 158 (1913). Corporate

records which tend to incriminate a corporate officer can be subpoenaed even where the corporation is a mere alter ego of its owner, since any claim to personal privilege is relinquished as to corporate records by the actor's choice of the corporate form for the individual's business. People ex rel. Scott v. Pintozzi, 50 Ill.2d 115, 277 N.E. 2d 844.

In Pintozzi, supra, the trial court had expressly found that the corporations were the alter egos of the two principal defendants. In affirming the trial court's refusal to recognize the Fifth Amendment claim, the Illinois Supreme Court stated:

> ". . .The corporate records and documents held by an officer or agent of the corporation cannot be the subject of the personal privilege against self-incrimination even though the production of the corporate records and documents may tend to incriminate him personally. See United States v. White; Wilson v. United States; Essgee Co. of China v. United States; People v. Ryan, 410 Ill. 486, 103 N.E. 2d 116.
>
> "The defendants insist that regardless of the last stated principle of law they should be able to assert the fifth amendment privilege because the State is attempting

to disregard the corporate existence in order to impose liability on the defendants personally on the theory that the corporations are but the alter egos of the defendants. They assert that the corporate entity cannot be disregarded for such purpose and then used as a reason for denying the defendants the protection of the fifth amendment. This contention has been considered on numerous occasions by the Federal Courts which have held that the personal privilege against self-incrimination is relinquished as to corporate books, records and documents by the choice of the corporate form for an individual's business. Corporate records which may tend to incriminate an individual may be used as evidence against him even where the corporation is his mere alter ego. (Hair Industry Ltd. v. United States (2d cir.), 340 F.2d 510; United States v. Fago, (2d cir.), 319 F.2d 791; United States v. Guterma, (2d cir.), 272 F.2d 344; Lagow v. United States (2d cir.), 159 F.2d 245.) We adopt the rule announced in these cases."

Pintozzi is the lead case in an annotation in 52 A.L.R.3d 623-661, covering the subject "Right of member, officer, agent, or director of private corporation or unincorporated associa-

tion to assert personal privilege against self-incrimination, with respect to production of corporate books or records. . . ." At page 634 of the annotation, the author comments:

> "Implicitly recognizing that such documents are the property of the organization, and not of the custodian, the courts in all of the cases collected herein have held or recognized that one who has custody of such books or records has no right to object to their production on the ground that their contents might incriminate him personally. . . ." (Our emphasis.)

In Hair Industry Ltd. v. U.S., (1965 CA2d N.Y.) 340 F.2d 510, cert. denied 381 U.S. 950, 14 L.Ed.2d 724, 85 S.Ct. 1804, the sole owner of a family corporation was held unable to refuse to produce corporate records and documents which were subpoenaed by the Internal Revenue Service, on the basis of his privilege against self-incrimination. The Court concluded by saying that corporate records which would tend to incriminate a corporate officer, can be subpoenaed even where the corporation is a mere alter ego of its owner.

In Application of Weiss (1968, D.C.N.Y.) 283 F.Supp. 97, where the sole stockholder of a corporation sought to quash a grand jury subpoena directing him to produce the corporation's

books and records on the grounds of self-incrimination, the Court held that although the corporate records might tend to incriminate him, they could be subpoenaed even if the corporation was merely the alter ego of its owner.

In U.S. v. Richardson (1971 D.C. Colo.) 337 F.Supp. 1053 (C.A. 10) 469 F.2d 349, the Court said that corporate books are subject to production even if (1) the books would incriminate personally the officer upon whom process is served and (2) incriminating portions of the records were made by the corporate officer. The Court also stated that corporate records which tend to incriminate a corporate officer can be subpoenaed even where the corporation is a mere alter ego of its owner, since any claim to personal privilege is relinquished as to corporate records by the choice of the corporate form for the individual's business.

In Christianson v. U.S.,(1955 C.A. 8 N.D.) 226 F.2d 646, cert. denied 350 U.S. 994, 100 L. Ed.859, 76 S.Ct. 543, the sole owner and president of a corporation who was indicted for conspiring to violate a federal statute prohibiting the interstate transportation of gambling devices argued that since he was the owner of the company, the records were really his personal records. The Court stated that the argument could neither

militate against nor modify the established principle that corporate records are not the private property of an individual, and hence, not protected by the Fifth Amendment. See also U.S. v. Bowman (1970 C.A. 3 N.J.) 435 F.2d 467, where the Court held that the sole stockholder and president of a closely held corporation could not assert his personal privilege against self-incrimination as to the production of corporate books and records.

The same claim was made by a closely held corporation alleged to be dealing in obscenity and was rejected by the U.S. District Court in U.S. v. Luros, 243 F.Supp. 160, cert. denied 382 U.S. 956, 15 L.Ed.2d 361, 86 S.Ct. 433. There the Court held at page 170:

> "The Court will now take up the matter of the Fifth Amendment as urged by the defendants. The defendants seek to invoke the Fifth Amendment privilege against self-incrimination with respect to the subpoena duces tecum. Whether it is urged by the individuals or on behalf of the corporations, the claim is without merit. The privilege against self-incrimination does not extend to corporations. Curcio v. United States, (1957) 354 U.S. 118, 77 S.Ct. 1145, 1 L.Ed.2d 1225; United States v. White, (1944) 322

U.S. 694, 64 S.Ct. 1248, 88 L.Ed. 1542; Fleming v. Montgomery Ward (7th Cir. 1940) 114 F.2d 384, cert. denied 311 U.S. 690, 61 S.Ct. 71, 85 L.Ed. 446. Its protection is confined to natural persons and only to the private papers of such persons. Rogers v. United States (10th Cir. 1951) 340 U.S. 367, 71 S.Ct. 438, 95 L.Ed.344. Consequently, the individual defendants have no standing to object and this is true even though the corporate records might incriminate them personally. Wilson v. United States (1911) 221 U.S. 361, 31 S.Ct. 538, 55 L.Ed. 771; United States v. White (1944) 322 U.S. 694, 64 S.Ct. 1248, 88 L.Ed. 1542; Christianson v. United States (8th Cir. 1955) 226 F.2d 646."

F. A Motion Picture Theater Cannot Claim Both A First Amendment Right To Commercially Advertise And Exhibit Hard-Core Pornographic Films and, At The Same Time, A Right To Privacy (Fifth Amendment Refusal To Produce Such Films Or Its Records Pertaining Thereto).

The policy which underlies the Fifth Amendment privilege is the protection of an individual's right to a "private enclave where he may lead a

private life." Bellis v. U.S., 417 U.S. 85, 40 L.Ed.2d 678 at 685, 94 S.Ct. 2179 (May 28, 1974). A motion picture theater operator cannot claim a First Amendment right to advertise its exhibition of hard-core pornographic films like "Hit" (see Exhibit 4 to Petition for Writ of Mandate in 2d Civ. 46869 at exhibits 25 and 32 to the deposition) at the Buena Vista Cinema, and, at the same time, refuse on grounds of the Fifth Amendment and the right to privacy, to produce its records pertaining thereto. Anderson v. Coulter Jr. and City of Phoenix, 108 Ariz. 388, 499 P.2d 103 (June 29, 1972), petition for certiorari denied in Anderson v. City of Phoenix et al., 410 U.S. 990, 36 L.Ed.2d 189, 93 S.Ct. 1514 (Mar. 19, 1973). Houston v. Manerbino, ___ Colorado ___, 521 P.2d 166 (April 22, 1974). See also Fair v. Smith and Hatfield ___ U.S. ___, 43 L.Ed.2d 769, ___ S.Ct. ___ (April 14, 1975) and Weekly Variety of April 23, 1975 (see copies in the Points and Authorities at Appendix D-1 to the Petition in 2d Civ. 46869). Smith and Hatfield, the projectionist and manager of a Lima, Ohio theater had been adjudge in contempt of the state court for failure to produce an allegedly obscene film at an adversary hearing and the federal courts granted a writ of habeas corpus. On April 14, 1975, this Court granted

a writ of certiorari and remanded the case for further consideration in light of Bellis v. U.S., supra. On remand, the Court of Appeal vacated its judgment and the judgment of the District Court, and remanded the matter to the District Court for further consideration in light of Bellis v. U.S., supra. (See copy of Order in the Points and Authorities at Appendix D-1 to the Petition for Writ of Mandate in 2d Civ. 46869.)

G. The Record Herein Establishes A Prima Facie Case Calling For The Production Of Films And Records. The Court Below Erred In Holding The Fifth Amendment Privilege Applied.

The record clearly establishes the existence of such records, their relevance to Petitioner's cause of action to abate the theater as a public nuisance, and possession by Stephen E. Tillander and North American Theatre Association, Inc. and the power to produce the same:

1. Stephen E. Tillander is president and treasurer of North American Theatre Association, Inc. (see Exhibit 4 at Exhibit 28 to Deposition) and executed the articles of incorporation for said corporation on Oct. 23, 1974, after the Duarte City Council commenced its consideration of the Buena Vista Cinema. Said Corporation manages motion picture theaters (see Exhibit 4

at Exhibit 27 to Deposition).

2. Stephen E. Tillander is the only person authorized to sign checks on North American Theatre Association, Inc. account 01-609-351 at the Western Bank of Commerce (see Exhibit 4 at Exhibit 31 to Deposition).

3. Jess Wilder, also vice-president and secretary of North American Theatre Association, Inc., holds the lease for the Buena Vista Cinema at a monthly rent of $1,029.60 (see Exhibit 4 at Exhibits 28, 30 to Deposition). North American Theatre Association, Inc. check Nos. 432 and 614 dated February 5, 1975 and March 12, 1975, in the amount of $1,029.60 were paid to Dunn Properties Corporation as rent for the Buena Vista Cinema. Dunn Properties Corporation manages the property for the owner, Diversified Realty Fund "A" (see Exhibit 4 at Exhibit 29 to Deposition).

4. North American Theatre Association, Inc. check No. 880 dated April 9, 1975 was given to the Los Angeles Times as payment for the advertisement of "The Hit" which played at the Buena Vista Cinema (see Exhibit 4 at Exhibits 25 and 32 to Deposition), and was signed by Stephen E. Tillander.

In McPhaul v. U.S., 364 U.S. 372, 5 L.Ed.2d 136, 81 S.Ct. 138 (Nov. 14, 1960) this Court held, at page 142:

"It is of course true that '(a) court will not imprison a witness for failure to produce documents which he does not have, unless he is responsible for their unavailability, cf. Jurney v. MacCracken, (294 U.S. 125), or is impeding justice by not explaining what happened to them; United States v. Goldstein, 105 F.2d 150 (1939),' United States v. Bryan, 339 U.S. 323, 331, 94 L.Ed. 884, 890, 70 S.Ct. 724. But, so far as the record shows, petitioner has never claimed--either before the Subcommittee, the District Court, or the Court of Appeals, and he does not claim here--that the records called for by the subpoena did not exist or that they were not in his possession or subject to his control.

". . .The Government's proof at the trial thus established a prima facie case of willful failure to comply with the subpoena. The evidence of the Subcommittee's reasonable basis for believing that the petitioner could produce the records in question, coupled with the evidence of his failure even to suggest to the Subcommittee his inability to produce those records, clearly supported an inference that he could have produced them. The burden then shifted

> to the petitioner to present some evidence to explain or justify his refusal. Morrison v. California, 291 U.S. 82, 88, 89, 79 L.Ed. 664, 54 S.Ct. 281. But he elected not to present any evidence."

See also Curcio v. U.S., 354 U.S. 118, 1 L.Ed.2d 1225 where this Court states at 1232 footnote 7:

> "7. In this case petitioner might have been proceeded against for his failure to produce the records demanded by the subpoena duces tecum. See Nilva v. United States, 352 U.S. 385, 1 L.Ed.2d 415, 77 S.Ct. 431; United States v. Fleischman, 339 U.S. 349, 94 L.Ed. 906, 70 S.Ct. 739; United States v. White, 322 U.S. 694, 88 L.Ed. 1542, 64 S.Ct. 1248, 152 A.L.R. 1202; Wilson V. United States, 221 U.S. 361, 55 L.Ed. 771, 31 S.Ct. 538, Ann Cas 1912D 558."

Los Angeles County Superior Court Judge August Goebel's suggestion (see Appendix "D-3" to the Petition for Writ of Mandate in 2d Civ. 46869) that petitioner might request the Corporation under C.C.P. 2031 to inspect and copy does not address itself to, or answer the sole issue which was presented to the court: i.e., whether a corporate president can be required to produce the designated records of the Corporation at the

Corporation's deposition. When produced, as the law requires, petitioner has the right to ask a number of questions of the Corporation regarding those records. A person doing business in a City under a city license, who has sought to operate under a corporate shelter, may not use the Fifth Amendment privilege as both a sword (right to operate business) and a shield (refusal to produce records). See Independent Productions Corp. et al. v. Loew's Incorporated et al., 22 F.R.D. 266 at 276-279 (May 29, 1958).

While it is undoubtedly true that the Fifth Amendment personal privilege may be exercised as to those questions which may incriminate--that is an entirely different proposition than the sole question presented to Judge A. Goebel on June 6 and June 27, which was, "when a deposition is taken of a corporation by its corporate officer, can the Court order the corporation to produce its designated records where it has failed to do so after proper notice given under C.C.P. 2034(a)." In the latter situation, neither the corporation nor the Corporate officer has standing to object on Fifth Amendment grounds.

It bears emphasis that the deposition which was taken on April 30, 1975 was the deposition of the Corporation North American Theatres Association, Inc. by its president. See the Notice

of Intent to Take the Deposition at Appendix "C-1" to the Petition for Writ of Mandate in 2d Civ. 46869, and the Transcript of said Deposition at Exhibit 4 to that Petition for Writ of Mandate at pages 3-5. It was not the deposition of "Stephen E. Tillander, a defendant" (as incorrectly set forth by Court Reporter Suzanne Dambly on the cover sheet of the April 30, 1975 deposition). The deposition of Stephen E. Tillander, as an individual defendant, was taken on March 3, 1975. (See paragraph XXXII of the Petition for Writ of Mandate in 2d Civ. 46869 at pages 30 and 31.) There was no attempt made in that case for an order to compel compliance.

CONCLUSION

The guidelines laid down in Southeastern Productions, Ltd. v. Conrad, ___ U.S. ___, 43 L.Ed.2d 448, 95 S.Ct. ___ (March 18, 1975) are, of necessity rooted in the fundamental principal that governmental institutions do have the right, power, and duty to speedily and effectively restrain those forms of expression that do not merit constitutional protection, and which are detrimental to the welfare of the community or harmful to other fundamental rights of the people. In order to exercise such power, and fulfill this duty to the people who created it, and who look

to it for protection, a government must choose between the creation of a system of "prior restraint", ever mindful of the many Constitutional pitfalls that can invalidate such a system, or its alternative: i.e., turn first to the Courts for judicial decision, prior to any restraint on the form of expression under scrutiny.

Where a municipality, such as the City of Duarte, choses the latter course and stays its hand, and does not impose any "prior restraint" on the expression it finds objectionable, but is at the same time blocked by the State Court System from obtaining a prompt judicial determination of the obscenity vel non of the material in question, then the procedural safeguards so carefully laid out by this Court become a shield to protect the mercurial activities of the pornographer. Such a result was never intended by this Court.

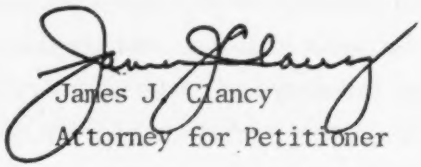
Surely the principles of procedural due process inherent in our system of ordered liberties will not tolerate a result whereby a community that treads heavily on the rights of the individual by initiating a system of "prior restraints" on expression, is favored with a more prompt purging of lewd and obscene material from its social system, in comparison to that community which pays attention to the rights of even those

citizens it knows are abusing the privileges and liberties of citizenship.

The Writ of Certiorari should be granted as prayed for.

Respectfully submitted,

Dated: December 7, 1975



James J. Clancy
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 1975, copies of the within Petition for Writ of Certiorari were mailed, postage prepaid, to the below listed parties to the proceedings. I further certify that all parties required to be served have been served.

Hon. August Goebel
L.A. Superior Court
111 N. Hill Street
Los Angeles, CA

Clerk, Court of Appeal
2nd Appellate District
3580 Wilshire Blvd, Rm. 301
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James J. Clancy
Attorney for Petitioner

APPENDIX A

Amendment I of the Constitution of the United States. A-3

Amendment V of the Constitution of the United States. A-3

Amendment X of the Constitution of the United States. A-3

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

APPENDIX B

List of Motion Picture Films Exhibited
at the Buena Vista Cinema between
July 15, 1974 and November 14, 1974

(see page 9 herein). B3

Date On Or About Which Exhibition Commenced	Films
July 15, 1974	"The Devil In Miss Jones and "Deep Throat
Aug. 1, 1974	"The Chambermaids" and "Souzy's House"
Aug. 23, 1974	"The Hardy Girls" and Untitled Companion Feature
Sept. 6, 1974	"The Blue Balloon" and "The Medallion"
Sept. 20, 1974	"Easy Pickup" and "Badge 69"
Oct. 2, 1974	"Armed Services" and "Hungry Hypnotist"
Oct. 9, 1974	"Touch Me" and "69 Sunset Strip"
Oct. 10, 1974	"Revolving Teens" and "Tycoon's Daughter"
Oct. 20, 1974	"Hungry Girls" and Untitled Companion Feature
Oct. 31, 1974	"Easy Money and "My Husband the Producer"
Nov. 14, 1974	"After School Exams" and "Gina, the Foxy Chick"

APPENDIX C

List of Affidavits and Exhibits filed December 19, 1974 in support of Petitioner's Motion for a Preliminary Injunction (see page 17 herein). C3

1. Time-Motion Studies for the films "The Cheaters" (Exhibit AA) and "Busy Bodies" (Exhibit (BB), exhibited at the Buena Vista Cinema on December 3, 1974;

2. Time-Motion Studies for the films "Johnny Wadd" (Exhibit CC) and "Johnny Wadd in the Blonde in Black Lace" (Exhibit DD), exhibited at the Buena Vista Cinema on December 12, 1974, and alos being exhibited at said theater on the date of the hearing on Thursday, December 19, 1974;

3. Affidavits of Robert S. Perry, executed on December 17, 1974, and of Robert McGuire, executed December 17, 1974 (in Support of the Time-Motion Studies designated Exhibits "AA" through "DD") and

4. Two tape recordings of the sound tracks for Exhibits CC and DD for use in a proposed courtroom demonstration as explained at page 2 line 23 through page 3 line 5 of the affidavit of Robert S. Perry (Exhibit "RR").

APPENDIX D

List of Exhibits received in evidence
by Trial Court during presentation
of Petitioner's case on the Motion
for Preliminary Injunction,
December 19, 1975 (see page 18 herein). . . D3 - D7

Exhibit "A"	Time-motion study "Devil In Miss Jones", Exhibited July 15, 1974 (647 photos)
Exhibit "B"	Time-motion study "Deep Throat" Exhibited July 15, 1974 (718 photos)
Exhibit "C"	Time-motion study "Chambermaids" Exhibited Aug. 1, 1974 (810 photos)
Exhibit "D"	Time-motion study "Souzy's House" Exhibited Aug. 1, 1974 (656 photos)
Exhibit "E"	Time-motion study "The Hardy Girls", Exhibited Aug. 23, 1974 (730 photos)
Exhibit "F"	Time-motion study Untitled companion feature, Exhibited Aug. 23, 1974 (590 photos)
Exhibit "G"	Time-Motion Study "Blue Balloon" Exhibited Sept. 6, 1974 (850 photos)
Exhibit "H"	Time-motion study "The Medallion" Exhibited Sept. 6, 1974 (659 photos)
Exhibit "I"	Time-motion study "Easy Pickup" Exhibited Sept. 20, 1974 (597 photos)
Exhibit "J"	Time-motion study "Badge 69" Exhibited Sept. 20, 1974 (828 photos)
Exhibit "K"	Time-motion study "Armed Services" Exhibited Oct. 2, 1974 (643 photos)
Exhibit "L"	Time-motion study "Hungry Hypnotist, Exhibited Oct. 2, 1974 (638 photos)

Exhibit "M"	Time-motion study "Touch Me" Exhibited October 9, 1974 (759 photos)
Exhibit "N"	Time-motion study "69 Sunset Strip", Exhibited October 9, 1974 (731 photos)
Exhibit "O"	Time-motion study "Revolving Teens" Exhibited October 10, 1974 (640 photos)
Exhibit "P"	Time-motion study "Tycoon's Daughter" Exhibited October 10, 1974 (559 photos)
Exhibit "Q"	Time-motion study "Hungry Girls" Exhibited Oct. 20, 1974 (567 photos)
Exhibit "R"	Time-motion study Untitled companion feature, Exhibited Oct. 20, 1974 (655 photos)
Exhibit "S"	Time-motion study "Easy Money" Exhibited Oct. 31, 1974 (654 photos)
Exhibit "T"	Time-motion study "My Husband the Producer", Exhibited Oct. 31, 1974 (691 photos)
Exhibit "U"	Time-motion study "After School Exams", Exhibited Nov. 14, 1974 (409 photos)
Exhibit "V"	Time-motion study "Gina, the Foxy Chick", Exhibited Nov. 14, 1974 (531 photos)
Exhibit "W"	"Tentative Lot Split Map" showing physical location of Buena Vista Cinema.

Exhibit "X"	Duarte City Ordinance, passed and adopted Nov. 12, 1974, effective Nov. 12, 1974.
Exhibit "Y"	Duarte City Resolution 74-32, passed and adopted Nov. 26, 1974.
Exhibit "Z"	Not used.
Exhibit "AA"	Time-motion study "The Cheaters" Exhibited Dec. 3, 1974. (588 photos)
Exhibit "BB"	Time-motion study "Busy Bodies" Exhibited Dec. 3, 1974(678 photos)
Exhibit "CC"	Time-motion study "Johnny Wadd" Exhibited Dec. 12, 1974 (911 photos)
Exhibit "DD"	Time-motion study "The Blonde in Black Lace", Exhibited Dec. 12, 1974. (720 photos)
Exhibit "EE"	Affidavit of Robert S Perry, executed on Nov. 25, 1974, in support of time-motion studies A - J and M - N.
Exhibit "FF"	Affidavit of Robert McGuire, Executed Nov. 23, 1974, in support of time-motion studies O - V.
Exhibit "GG"	Affidavit of James J. Clancy, executed Nov. 23, 1974, in support of time-motion studies K - L.
Exhibit "HH"	Affidavit of Robert R. Mitchell, executed Nov. 26, 1974.
Exhibit "II"	Affidavit of Robert McGuire, executed Dec. 17, 1974, in support of time-motion studies AA - DD.

Exhibit "JJ"	Articles of Incorporation (certified copy) for Dunn Properties Corp. and United Professional Planning, Inc., General Manager for Diversified Realty Fund "A", a limited partnership.
Exhibit "KK"	Grant Deed executed March 31, 1972 from Dunn Properties Corp., to Diversified Realty Fund "A" (certified copy).
Exhibit "LL"	Trust Deed executed March 31, 1972, by Diversified Realty Fund "A" with Title Insurance and Trust Co. as trustee and Dunn Properties Corp. as beneficiary.
Exhibit "MM"	City of Duarte records, certified by Deputy City Clerk Nov. 20, 1974, with Exhibits A, B, and C.
Exhibit "NN"	City of Duarte records, certified by Deputy City Clerk Nov. 21, 1974, with Exhibits E-1 and G-2.
Exhibit "OO"	Photo (overlay) of shopping center real estate of which Buena Vista Cinema is a part.
Exhibit "PP"	Photo of Buena Vista Cinema taken Dec. 4, 1974, with marquis advertisement "The City Wants Us To Quit, But We Won't" and "The Cheaters" and "Busy Bodies".
Exhibit "QQ"	Affidavit of Robert R. Mitchell, executed Dec. 18, 1974, re Plea of Guilty, entered on Oct. 29, 1974 to obscenity charge for films shown at the Buena Vista Cinema on July 30, 1974.

Exhibit "RR"	Affidavit of Robert S. Perry, executed Dec. 17, 1974, in support of time-motion studies AA - DD and Exhibits 1 and 2 attached.

APPENDIX E

List of Exhibits received in evidence by the Trial Court during presentation of Petitioner's case for the Motion for Preliminary Injunction, March 3, 1975. (See page 24 herein). . . . . E3 - E4

Exhibit "SS"	Time-motion study "Flesh of the Lotus", Exhibited Jan. 7, 1975 (649 photos)
Exhibit "TT"	Time-motion study "Tropic of Passion", Exhibited Jan. 7, 1975 (878 photos)
Exhibit "UU"	Time-motion study "The Love Witch", Exhibited Jan. 9, 1975 (867 photos)
Exhibit "VV"	Time-motion study "Certified Mail", Exhibited Jan. 9, 1975 (690 photos)
Exhibit "WW"	Time-motion study Untitled Companion to "Pistolero", Exhibited Jan. 20, 1975 (615 photos)
Exhibit "XX"	Time-motion study "Pistolero" Exhibited Jan. 20, 1975 (772 photos)
Exhibit "YY"	Time-motion study "Hawaii Sex-0" Exhibited Jan. 23, 1975 (897 photos)
Exhibit ZZ"	Time-motion study "Wanda's Education", Exhibited Jan. 23, 1975 (949 photos)
Exhibit "AAA"	Time-motion study "Wet Lips" Exhibited Feb. 6, 1975 (758 photos)
Exhibit "BBB"	Time-motion study Untitled companion to "Wet Lips", exhibited Feb. 6, 1975 (650 photos)
Exhibit "CCC"	Time-motion study "If Mother Could See Me Now", exhibited Feb. 20, 1975 (813 photos)

Exhibit "DDD"	Time-motion study Untitled companion to "If Mother Could See Me Now", exhibited Feb. 20, 1975 (936 photos)
Exhibit "EEE"	Affidavit of Robert S. Perry, signed Feb. 28, 1975, in support of time-motion studies.
Exhibit "FFF"	Affidavit of Robert McGuire, signed Feb. 27, 1975, in support of time-motion studies.

APPENDIX F

California Supreme Court Order of August 4, 1975 transferring Petition for Writ of Mandate to Court of Appeal, Second District F3

California Court of Appeal, Second Appellate District Minute Order of Aug. 12, 1975 denying the Petition for Writ of Mandate. F4

California Supreme Court Order filed Sept. 10, 1975, denying the Petition for hearing. F5

SUPREME COURT
FILED
AUG 4 1975
G. E. BISHEL, Clerk

L.A. No. 30497

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE ex rel CAMIL

v.

SUPERIOR COURT, COUNTY OF LOS ANGELES

The above entitled proceeding is transferred to the Court of Appeal, Second District.

WRIGHT,

Chief Justice

MINUTES OF AUGUST 12, 1975

DIVISION TWO

2nd Civil
46869

The People of the State of Calif.etc.,
Petitioner

vs.

Superior Court, Los Angeles County
Respondent

Buena Vista Cinema, etc.,
Real Party in Interest

THE COURT:

PETITION FOR WRIT OF MANDATE DENIED.

4TH Dec.

F-5

ORDER DUE
September 11, 1975

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, Civil No. 46869

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE EX REL CAMIL, PETITIONER

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY, RESPONDENT

BUENA VISTA CINEMA ETC., ET AL., REAL PARTIES IN INTEREST

Petition for hearing DENIED.

SUPREME COURT
FILED
SEP 10 1975
G. B. [illegible], Clerk

[signature]
Deputy

[signature]
Acting Chief Justice

I, G. E. BIRRELL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 1 day of DEC 1 - 1975 A.D. 19 —

By [signature]
Deputy Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975
No. 75-

PEOPLE OF THE STATE OF CALIFORNIA ex rel WILLIAM CAMIL, CITY ATTORNEY OF THE CITY OF DUARTE, CALIFORNIA,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondent,

BUENA VISTA CINEMA, being a building structure containing approximately 3,440 square feet (80' x 43'), located on real property commonly known as 1345 East Huntington Drive, Duarte, California; STEPHEN E. TILLANDER, d.b.a. BUENA VISTA CINEMA; DIVERSIFIED REALTY FUND "A", a Limited Partnership; TITLE INSURANCE AND TRUST COMPANY, a California Corporation; DUNN PROPERTIES CORPORATION, a California Corporation; JESS WILDER; INLAND EMPIRE ENTERPRISES, INC., a California Corporation; PHILIP A. FISHMAN; NORTH AMERICAN THEATRE ASSOCIATION, INC.; JOHN DOES 1 to 10,

Real Parties in Interest.

EXHIBIT A
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT

James J. Clancy
9055 La Tuna Canyon Rd.
Sun Valley, Calif. 91352
Counsel for Petitioner

EXHIBIT A-1

Los Angeles Times "Adult Movie" Ad Page of Thursday, July 24, 1975 Showing "Bad Beaulah" Playing At Buena Vista Cinema, 1345 East Huntington Drive, Duarte, California.

EXHIBIT A-2

Time and Motion Study of One Of The Hard-Core Pornographic Films Being Exhibited At the Buena Vista Cinema On The Date of Filing of The Petition (Third) for Writ of Mandate in 2d Civ. 46869, Being The 40th of such Programs. See Petition (Third) for Writ of Mandate in 2d Civ. 46869 at page 45 line 28.

EXHIBIT A-3

Time and Motion Study of the Second (untitled) Hard-Core Pornographic Film Being Exhibited At The Buena Vista Cinema On The Date Of Filing Of The Petition (Third) for Writ of Mandate in 2d Civ. 46869, Being The 40th of such Programs. See Petition (Third) for Writ of Mandate in 2d Civ. 46869 at page 45 line 28.

STAGE NOTES

To the Rescue of Theater

BY [illegible]

This corner shot an arrow into the air last week that fell to earth creating enormous fleshwounds.

Planted at that time was the notion that the moment had perhaps come for all of the performing arts—commercial as well as noncommercial constituents—to share in the general prosperity. Since film studios, independent and television film-makers and the television networks benefit most from talent hatched in the financially limited (and often ulcer) theatrical medium, the proposition was additionally that the profit makers should help support the nonprofit makers and pay off a debt of conscience in cold cash. Addressed also was the thought that a performing arts fund, established, fed and administered by all theater arts organizations, might comfortably take care of those at the experimental level, where sheer survival so often becomes a commercial problem.

Studios Contribute, Too

In response to these ideas, Gordon Davidson, artistic director of the Center Theatre Group Mark Taper Forum, tells me say that TV producers Norman Lear (All in the Family, Good Times, etc.) and Grant Tinker (Mary Tyler Moore Show) had just turned over to him and the Taper the awards of $5,000 each which each producer had received from the Population Institute "in recognition of significant contributions to the human community through compelling artistic treatment of population in entertainment medium." I'm not sure what all that means, but I am sure that Lear's and Tinker's substantial incomes are not only commendable but important. Lear could not be reached for comment, but Tinker credited him with free and flexible no-strings-attached donations and concession that, while he was not personally preoccupied with the fate of the theater, the theoretical idea of a performing arts fund, for all had enough room to engender his support.

Paul Barnes, president of the Free Public Theater, also endorsed the information (I'm told it's in the program of the Los Angeles Free Shakespeare Festival's "Shakespeare and His People" currently touring city and county parks) that she solicited and received contributions from $1,000 up from several studios, corporations, producers and other individual donors in the industry. Of the networks slower to respond, NBC has pledged $500, CBS has yet to reply and ABC has said no.

All of which illustrates that extra-industry cooperation, while hardly beating down the theater's doors, may not be as unpromising as it once seemed. The feeling was reinforced when New York producer Alexander H. Cohen in town for the opening of his "Good Evening" at The Shubert, met with the Los Angeles Drama Critics Circle Saturday. A discussion of last year's First American Congress of Theater and some of the conclusions drawn by Stuart Little in his recently published report of the event, "After the FACT," would indicate that there a enough units in the theater's families around to safeguard individuality while collectively warding off ills—lack of financiers chief among them. A right perhaps at the end of a very long tunnel.

Massey Joins 'Iguana'

Actor Raymond Massey, a stranger to the Los Angeles stage since 1932, has been set by Robert Fryer, managing director of the Center Theater Group-Ahmanson, to do the role of Nonno in Tennessee Williams' "Night of the Iguana" in the Ahmanson Theater.

The play reunites Massey and Richard Chamberlain who costarred in the highly successful mid-'60s Dr. Kildare TV series.

But in other respects, Massey's appearance as the fragile nonagenarian poet-grandfather who travels with his granddaughter Hannah Jelkes (to be played by Dorothy McGuire) and helps earn their living by reciting verse while she sketches portraits in cafes, sets off a couple of "firsts."

"I've never done Tennessee Williams," said Massey, "and I've never performed with Dorothy McGuire before." Both statements are as true as they seem unbelievable.

Massey, in fact, did "Abe Lincoln in Illinois" on Los Angeles in the '40s and then disappeared from the L.A. stage except for some trivial performances of "John Brown's Body" in 1952 prior to that show's New York opening. His most recent Broadway appearance was in 1966 when he did "I Never Sang for My Father" at the Duke of York's in London. Both he and Miss McGuire (who did "Summer and Smoke" at the Biltmore in the late '50s, return to the L.A. theater after equally long absences. A director has yet to be set for the show which will run Dec. 19 to Jan. 31.

★

CURTAIN CALLS: The Los Angeles Free Shakespeare Festival will hold a special preview open to members of "Romeo and Juliet" Aug. 5 at 8 p.m. at the Pilgrimage Theater. Mayor Bradley and other city and county dignitaries will attend with tax-deductible tickets priced at $10

VERNA FIELDS

Continued from First Page

Award nomination as film editor for "Graffiti." Fields has been handed an exhaustive consultation on all cinema duties. And all of it, default the jokes of impersonators in which she has subsequently risen, are true. I learned from heart-chairman Lew Wasserman president Sid Sheinberg and executive vice-president Herman Lang engaged in chat with Fields during a luncheon interview at the studio commissary. It is the first time they've ever done that. And Fields figured in the entertainment. It means I am really associated with a winner this time.

Fields' contribution to "Jaws" she says in matter-of-fact rhythm, She gives as an example the scene where the young boy is attacked by the shark causing a stampede by swimmers. It is known to the crew as the "paranoia scene."

On a motionless, a standard editing machine, she points out how to careful editing, three possible victims are established—a fat woman, a teen-ager and his dog and a young boy. The purpose is to make audiences think that one of the three will be attacked by the shark. With cuts she builds tension—her mounting teen-ager choking a stick into the water as dog retrieves it, fat lady treading into the surf, she relaxes, tension mounting attention on the beach and quickly heightened by introducing a false alarm. Suspicion rises. We see the dog's stark floating but not the dog. Back to the shark's point of view, legs paddling in the water above, the thrust upward, the boy's hinged spurting into the waves, the reaction shot chilmed at ten months after the attack was filmed), the panic and bedlam on the beach. In a scene that took less than two minutes there are more than 30 cuts.

"I see no reason Jaws should have an R," says Fields. What is frightening is tension. The violence is well hidden, there is no cruelty, no viciousness, no men killing or mauling other men. I've seen equally violent nature films.

"I've seen kids on roller coasters express the same kind of shock and tension. It's nothing more than that. But I think there are people not only kids, who do not respond well to tension or fear, and I think that they should not go to see the film.

"I have most editors who usually get a film in post production. Fields goes on location whenever possible. With Lucas' father, Dr. Martha Lucas and Francis Coppola's mother, Italia Coppola, Fields was invited to a dinner in Hawaii on the night the director was shooting. During it what supposedly was being in the evening meant the director was shooting in the morning. Fields was there when the wind machine broke and had to use her head as the producers at times and Spielberg at the back of the studio and Hawaii. At the end of following the final production the next two days.

By working with Spielberg daily, she says she was to get inside his head and know what he was doing. Spielberg, she says, "is a good sport, a marvelous young man who is open, does his mind reconsiderations but has a good sense of humor."

Fields, who is 56 and the daughter of Sam Zimbalist producer-director and editor of the M. Louis Pot and Clark Gable film "Command Decision," began her film career in 1942 for First Lang. She worked for Lang four years until she married fellow film editor Isaac Fields who was a frequent and member of two until 1964 her husband died of a heart attack at 50. Then she resumed editor for Walter Mirisch. Among her credits "I Could Go" and her last film as a second editor Benjamin Turiger. Her first film editing job was on "Stalag 17."

From the film industry she learned one thing to remember, she says, is a program at Eureka in the Of tectonic Opportunists." It was a program devised the Canadian Film Board to help people in local communities listen to the opposite side of an issue. We were into an area and film a school principal. Two kids were taken suspended, a member of the board of education then hopefully get them together to see it and get some sort of dialogue. "The purpose the were on one side in networked herself into 8 kids with problems.

After that she says "I decided to slow down." It turned on work with students and taught editing at Among her most students and local fans one is Matthew Robbins who is now [illegible] The Sugarland Express," Willard Huyck and Gloria Katz who on "Graffiti" and Lucas. Lucas' wife directors John and George Lucas. She not only taught Lucas film but endorsed him to an aspiring film editor when he married Lucas related "Alice Doesn't Live Here Anymore."

Verna Fields has her own private statue of course which after much too long a wait, she is finally getting done. Not for having the glory or glamor. I have sentiment, Fields says.

I am happy to be able to give tasteful advice and to help people. I'm glad I've had the life I've had. Nothing I do is ever and above the call of duty. The one point made by Verna Fields that seemed arguable

ADULT MOVIES/ENTERTAINMENT ADULT MOVIES/ENTERTAINMENT! ADULT MOVIES/ENTERTAINMEN

"X Rated No one under 18 admitted. This category includes motion pictures submitted to the Code and Rating Administration and rated "X" because of the treatment of sex, violence, crime or profanity. Pictures rated "X" do not qualify for a Code Seal".

★ ★ ★

The advertisements listed under the "Adult Movies" banner in The Times include unrated adult films or entertainment and "X" rated movies.

"X" Rated No one under 18 admitted.

PREMIER Adult Theatre

THE SEXORCIST'S DEVIL a SENSUOUS screaming player in the depths of EROTIC HELL! starring LILY LAMARA PLUS CONTACT

DON'T MISS THAT FANTASTIC FRENCH THROAT SEX CLINK GIRLS

the BITE PLUS GOLDENBOD

THAT'S EROTICA! FOUR STAR

ALOHA MOTEL EROTIC ADULT FILMS

Starring Monday, July 28th!

EXCEEN

Hurry, Ends Sunday, July 27th

PUSSYCAT THEATRES WHERE THE REAL ADULT ACTION IS

"Pamela" GUARANTEES what other films only HINT at!

the Private Afternoons of Pamela Mann

ESSEX Angel on Fire

DARBY LLOYD RAINS

SS PORNOGRAPH in the ORIENT

TAKE A FRIEND-SEE THEM TOGETHER SEE THEM SOON

The One And Only... DEEP THROAT

The Most Interesting Film Of Its Kind' 'Devil in Miss Jones'

HURRY!

NO ONE UNDER 18

'Charlotte' is certainly not a film for everyone, but for those who like an erotic film that is stylish, even elegant, 'Charlotte' can certainly fill the bill.

Director Roger Vadim has crafted an incredibly literate, astute, lovely to look at, charming, and chilling movie that is guaranteed to open both your eyes and mouth in shocked disbelief. I want to warn that his film isn't for the faint-hearted, nor those given to excessive blushing. But if psychological crime dramas are your weakness, Vadim's latest is a spanner you won't forget for a long time. Vadim has not only written, directed and produced, he stars as one of the leading characters. Because Vadim, as the author draws them larger than life, the immorality never threatens to destroy a well told tale.

Charlotte A film by Roger Vadim

NOW SHOWING

The ultimate in explicit sensuality. night after night

the exception to the rule "OH HER"

EXHIBIT A-2

Time and Motion Study of One Of The Hard-Core Pornographic Films Being Exhibited At The Buena Vista Cinema On The Date of Filing Of The Petition (Third) for Writ Of Mandate in 2d Civ. 46869, Being The 40th of such Programs. See Petition (Third) for Writ of Mandate in 2d Civ. 46869 at page 45 line 28.

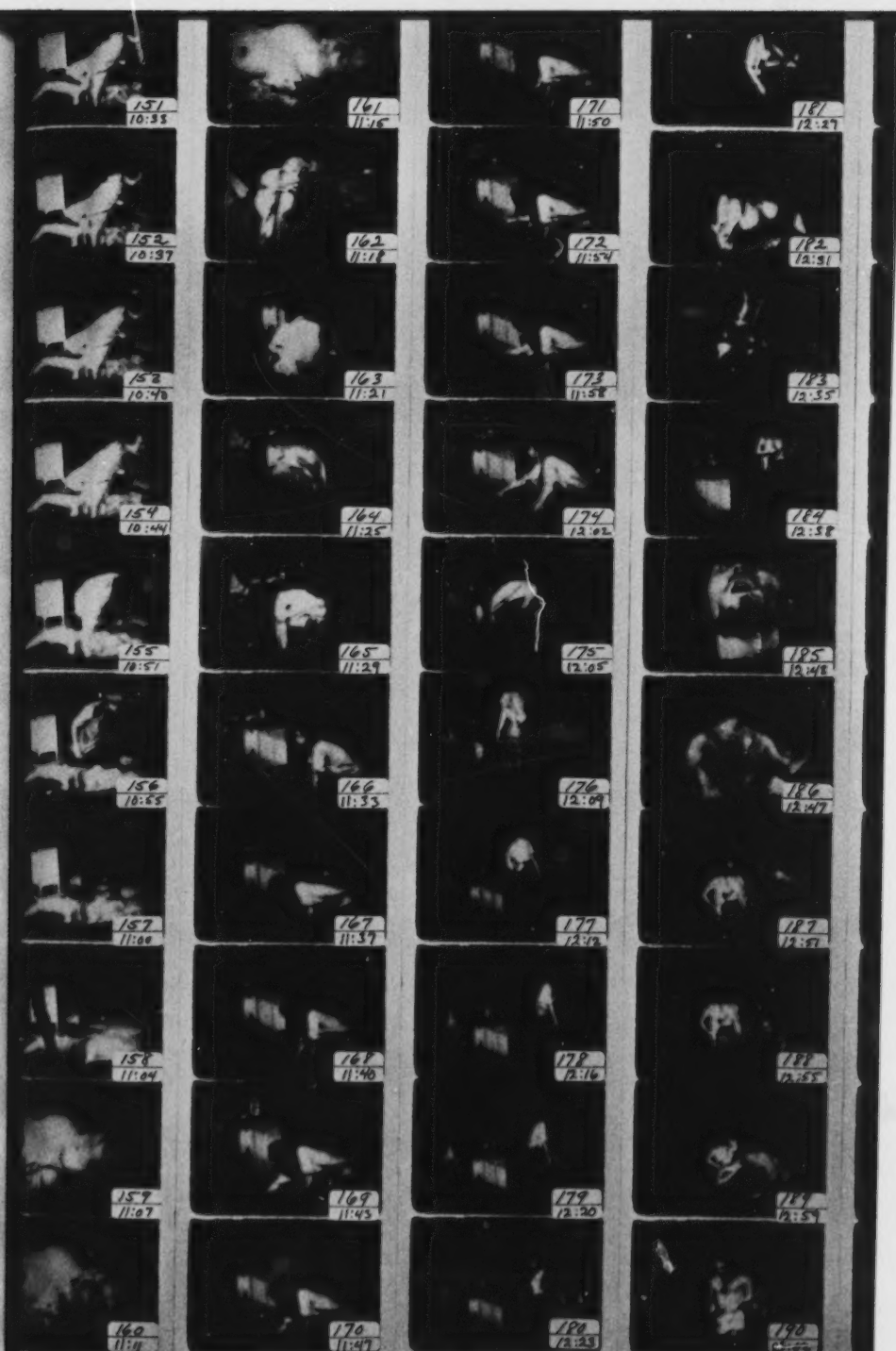
BAD BLACK BRUIAH

PART 1. (1-6) CREDITS; (7-14) FEMALE SCRUBBING FLOOR, BREASTS EXPOSED; (15-25) MALE TENDER AND MALE PATRON; (26-41) FEMALE SLOPS WATER ON $30.00 BOOTS. MALE FORCES FEMALE TO FLOOR; (41-42) FEMALE WIPES MALE'S TROUSERS; (43-50) FELLATIO.

PART 2. (91-94) VARIATIO CONT'D. (95-100) MALE POURS WHISKEY ON FEMALE VAGINA AND SOAPS VAGINAL AREA WITH BAR OF SOAP.

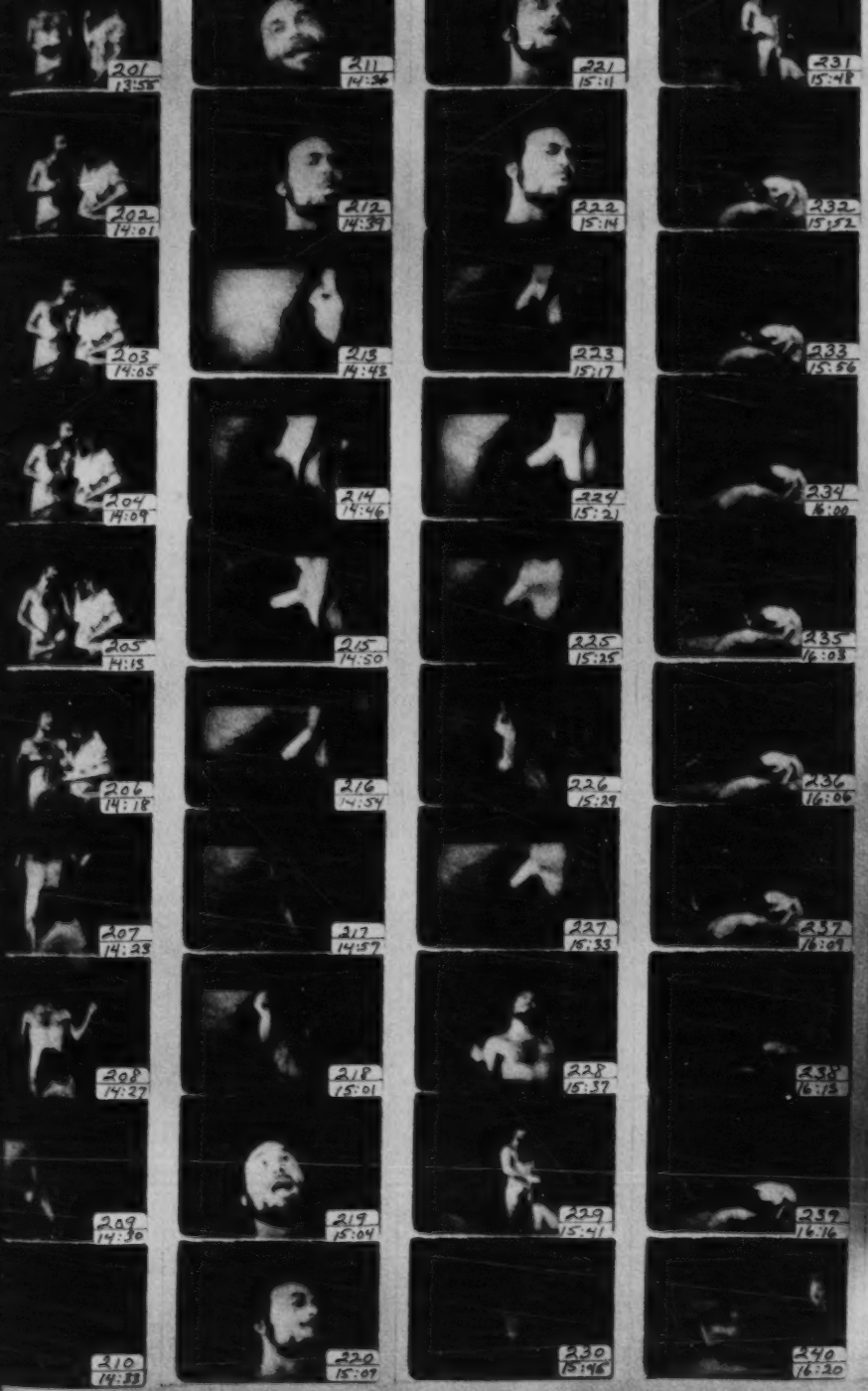
PART 3. (101-121) MALE APPLIES SOAP TO FEMALE'S VAGINA. TELLS FEMALE HE MUST CLEAN HER BEFORE INTERCOURSE. MALE USES SOAP ON HIS PENIS; (122-150) MALE ENGAGES FEMALE

ED AT:
VISTA CINEMA
CALIFORNIA



PART 6. (151-154) SEXUAL INTERCOURSE CONTINUES; (155-156) MALE DONS CLOTHES AND LEAVES; (157-161) FEMALE SCRUBBING SCRUBBING FLOOR; (162) RUBS SPITOON; (163) SCRUBBING MALE APPEARS AND ANNOUNCES HE IS A GUEST RELEASED BY HER RUBBING SPITOON.

...ED AT:
...ISTA CINEMA
...L, CALIFORNIA
...10, 1975.



...ED AT:
...VISTA CINEMA
..., CALIFORNIA
...30, 1975.

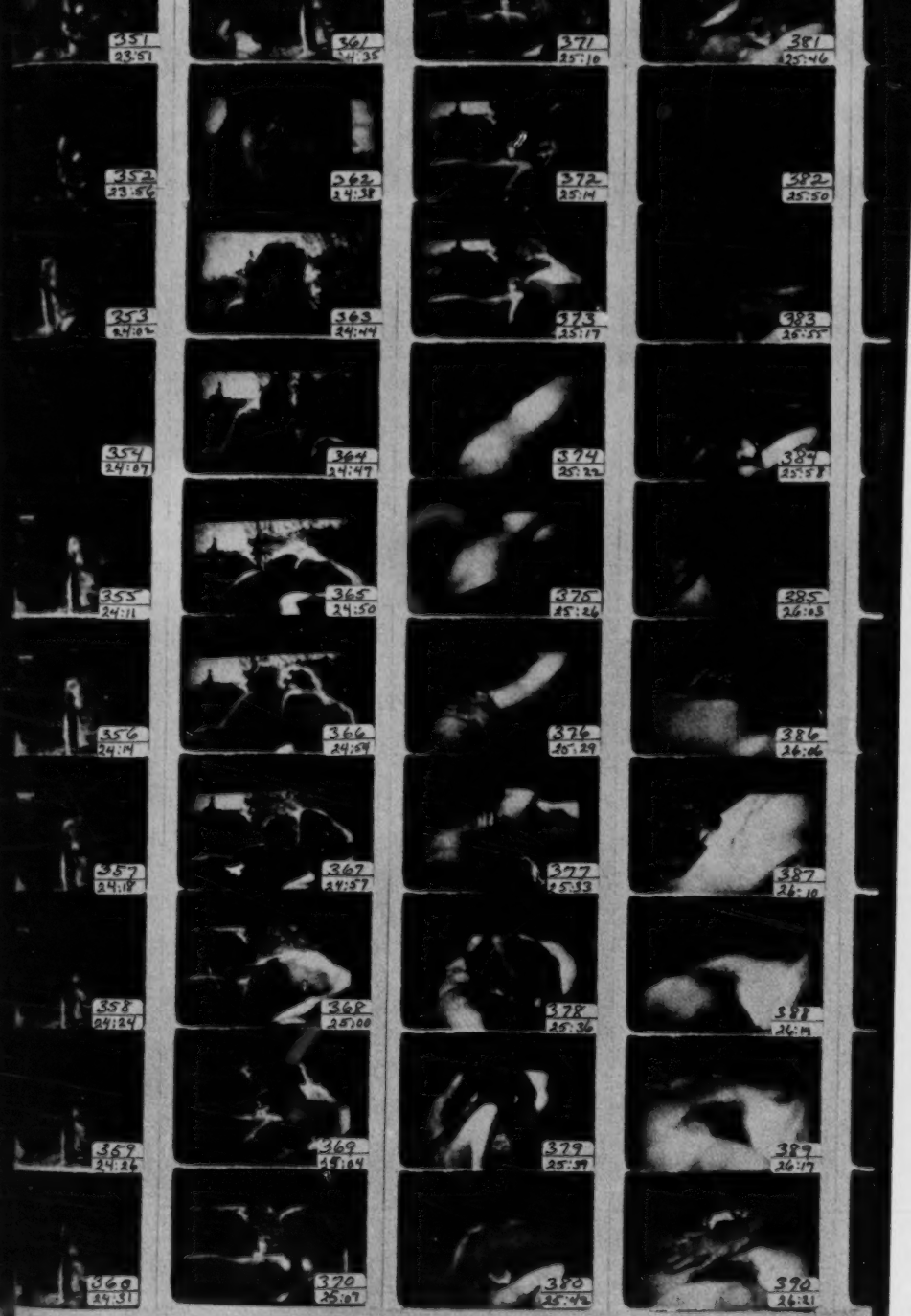
PART 5. (201-203) FEMALE TELLS GENII HE SHELLS; (205) GENII TELLS FEMALE SHE WILL BE GRANTED 3 WISHES BUT BEFORE EACH SHE MUST REMOVE HIS HARWOOD; (207-250) FEMALE PERFORMS FELLATIO ON GENII TO EJACULATION.

PART 6. (251) FELLATIO CONTINUED; (265-300) GENII SNAPS FINGERS AND SCENE SHIFTS TO ORGY SCENE OUTDOORS. THREE FEMALES AND TWO MALES. MALE PERFORMS CUNNILINGUS ON ONE FEMALE HANGING FROM TREE. MALE ENGAGES FEMALE IN SEXUAL INTERCOURSE AS SHE FELLATES

HD AT:
VISTA CINEMA
, CALIFORNIA
4-30, 1975.

PART I. (301) GROUP SEXUAL ORGY CONTINUED; (301-306) FELLATIO; (307-312) GROUP ORGY (310-318) GENII FINGERS FEMALES VAGINA AND STIMULATES FEMALE BREASTS; (326-333) OR-

AT:
NA CINEMA
CALIFORNIA

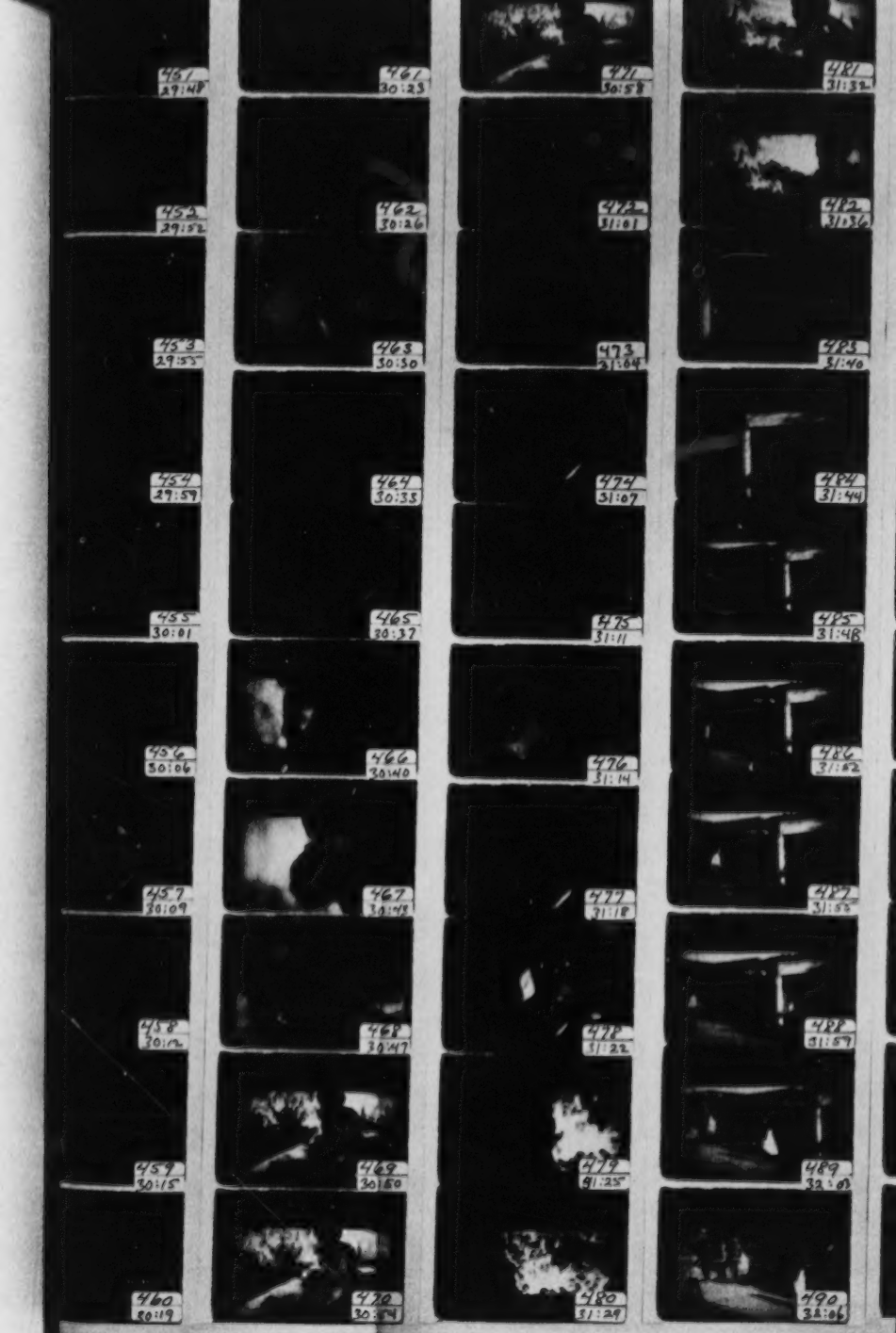


AT:
LIFIA CINEMA
CALIFORNIA
-H, 1975.

PART B. (351-400) TWO FEMALES DISCUSS MYSTERIOUS TRANSPORTATION AND ENGAGE IN LESBIAN ACTIVITY.

...D AT:
...STA CINEMA
..., CALIFORNIA
...30, 1975.

PART 2. (401-443) LESBIAN ACTIVITY CONTINUES; (444-450) GENII REAPPEARS.



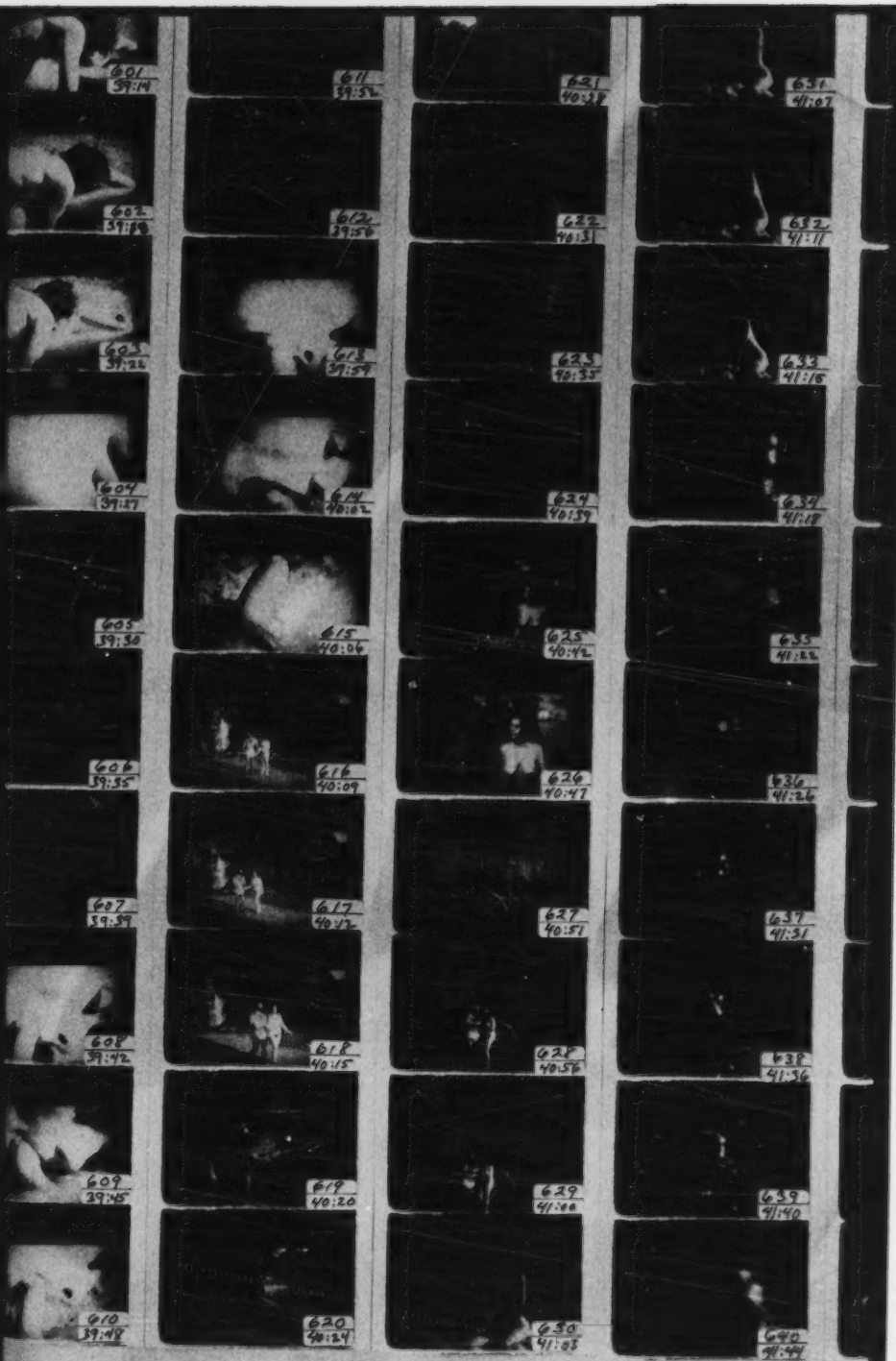
PART 10. (451-476) FELLATIO; (483) SCENE SHIFTS. COWBOY ABOUT TO ENGAGE IN GUN FIGHT THROWN OUT OF BAR; DISAPPEARS. (497-500) COWBOY REAPPEARS IN OPEN AREA WITH

TED AT:
ISHA CINEMA
, CALIFORNIA
30, 1975.

PART 11. (501-524) NUDE MALE WITH GUN TELLS FEMALE OF MYSTERIOUS TRANSPORTATION; (525-550) MALE PERFORMS CUNNILINGUS ON FEMALE.

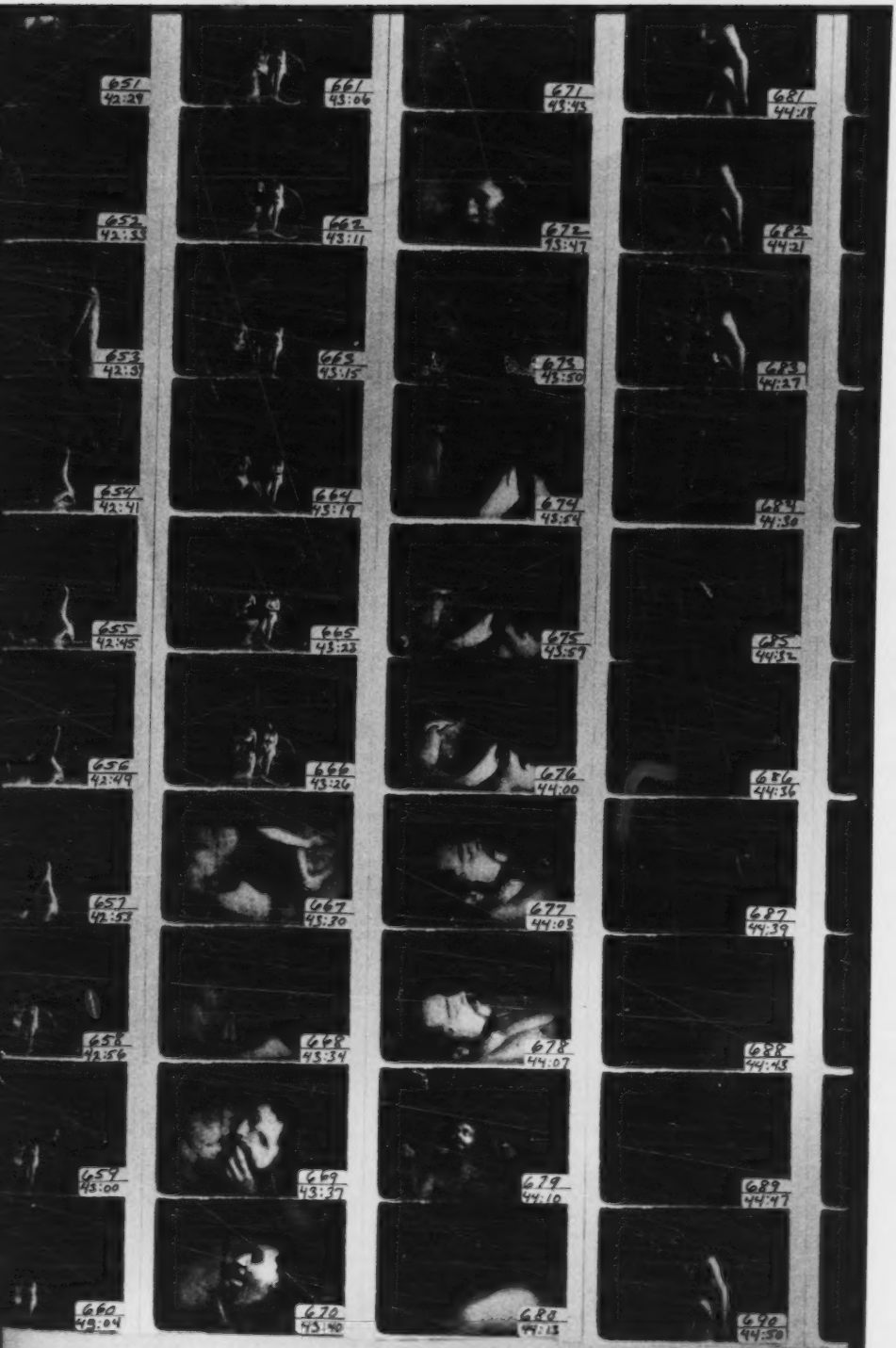
ITED AT:
VISTA CINEMA
L, CALIFORNIA
30, 1975.

PART 12. (551-562) FELLATIO; (562-564) RECUMBATION; (565) SCENE SHIFTS TO GOMEZ BEING FELLATED BY FEMALE; (570) FEMALE ASKS THAT TOMS NOT BE FROM HIM; HE AGREES; SCENE

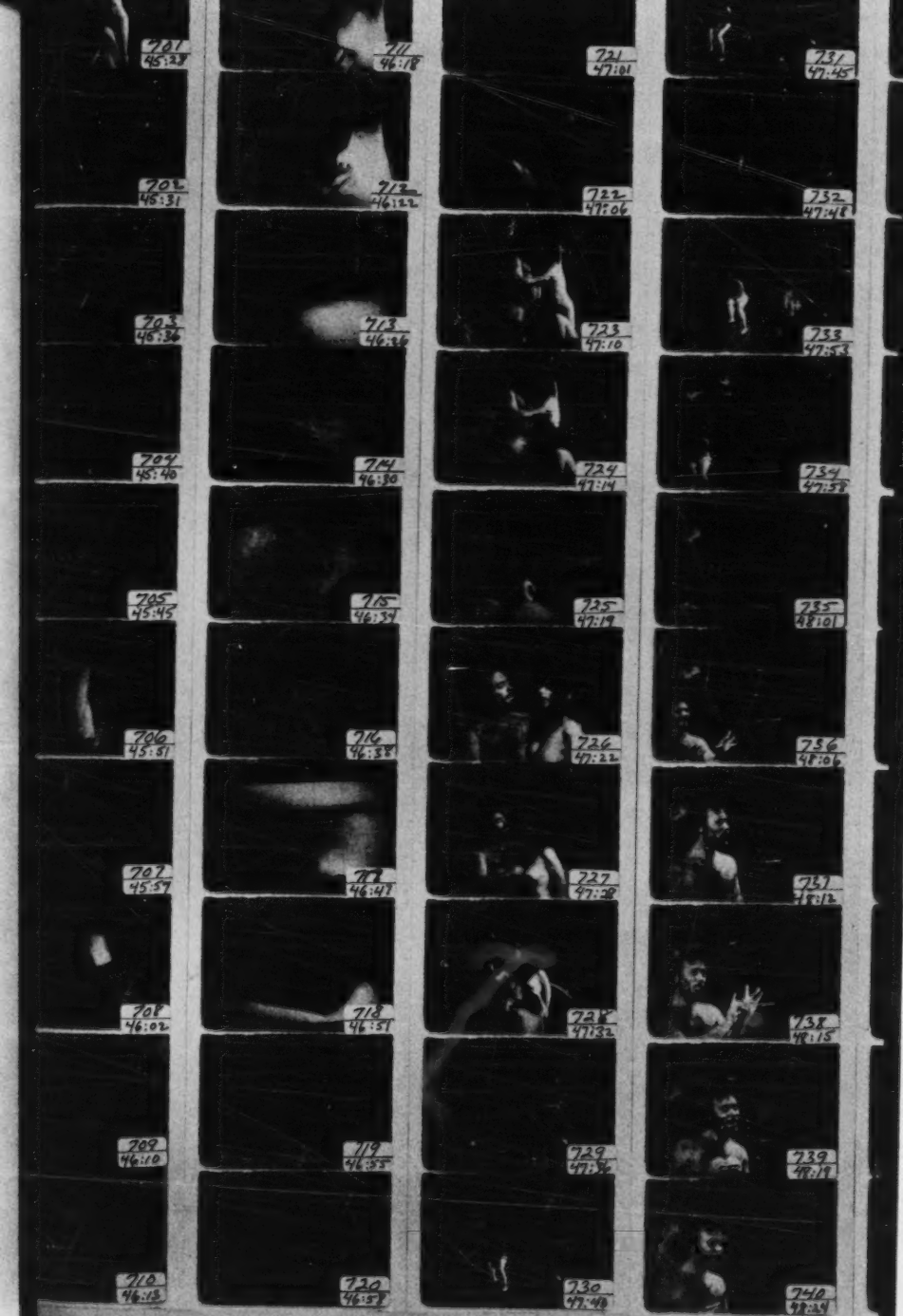


...AV:
...ISIA CINEMA
... CALIFORNIA
...30, 1975.

PART 13. (601-615) FELLATIO CONTINUED; (616-629) GENII AND FEMALE IN DESERTED TOWN. (630-650) MALE AND FEMALE IN SEXUAL INTERCOURSE WITH FEMALE ON TOP.



PART 14. (651-657) SEXUAL INTERCOURSE CONTINUED; (658-666) GENII CAUSES MALE AND



ND AT:
VISTA CINEMA
, CALIFORNIA
-30, 1975.

PART 15. (701-728) GENII AND FEMALE AND MALE AND FEMALE TALK. FEMALE ASKS LADY WISH; (729) GENII AND BLACK FEMALE WITH HOLSTER AND GUN. GENII SNAPS FINGERS. FEMALE BECOMES NUDE EXCEPT FOR HAT AND HOLSTER AND GUN; (744-750) GENII AND BLACK FEMALE ENGAGE IN SEXUAL INTERCOURSE.

AT:
STA CINEMA
CALIFORNIA
, 1975.

PART 16. (751-756) SEXUAL INTERCOURSE CONTINUED; (757-800) BLACK FEMALE AND GERLI ENGAGE IN SEXUAL INTERCOURSE.

D AT:
TA CINEMA
CALIFORNIA
0, 1975.

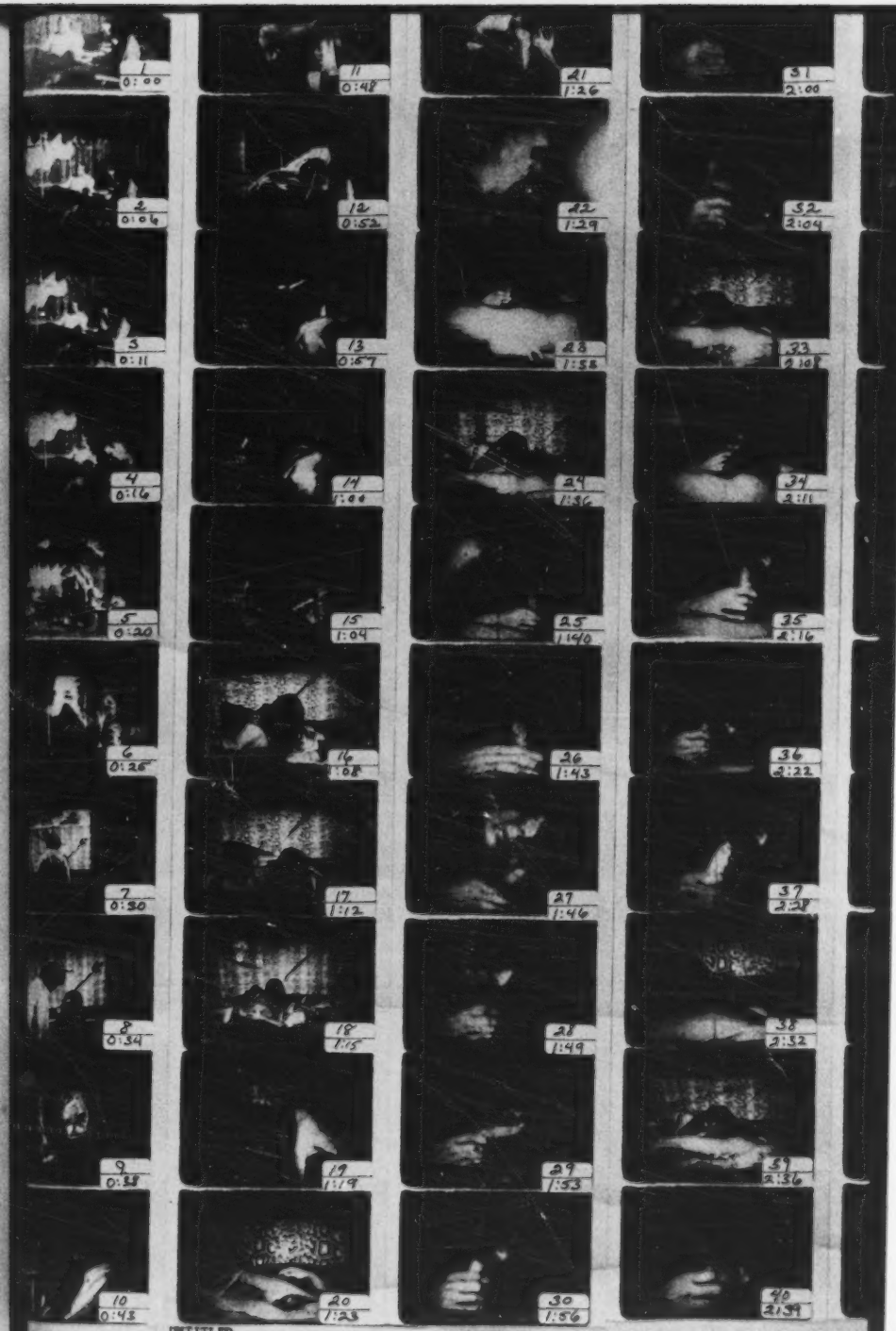
PART 17. (801-821) SEXUAL INTERCOURSE CONTINUED; (822-850) FELLATIO.

EXHIBITED AT:
EL VISTA CINEMA

PART 18. (851-872) FELLATIO; (873-875) SCENE SHIFTS TO FEMALE ON TOP IN SEXUAL [illegible]

EXHIBIT A-3

Time and Motion Study of the Second (Untitled) Hard-Core Pornographic Film Being Exhibited At The Buena Vista Cinema On The Date of Filing Of The Petition (Third) for Writ of Mandate in 2d Civ. 46869, Being The 40th Of Such Programs. See Petition (Third) for Writ of Mandate in 2d Civ. 46869 at page 45 line 28.



INTITLED

PART 1. (1-6) 3 MALE SUBJECTS DISCUSS INITIATION INTO CLUB; (7) MALE ENTERS ROOM WHERE FEMALE IS LYING ON BED IN HALTER, PANTIES, AND BOOTS. MALE INDICATES HE IS THERE TO BE INITIATED; (9-21) MALE AND FEMALE EMBRACE; FEMALE UNDRESSES MALE (29-30)

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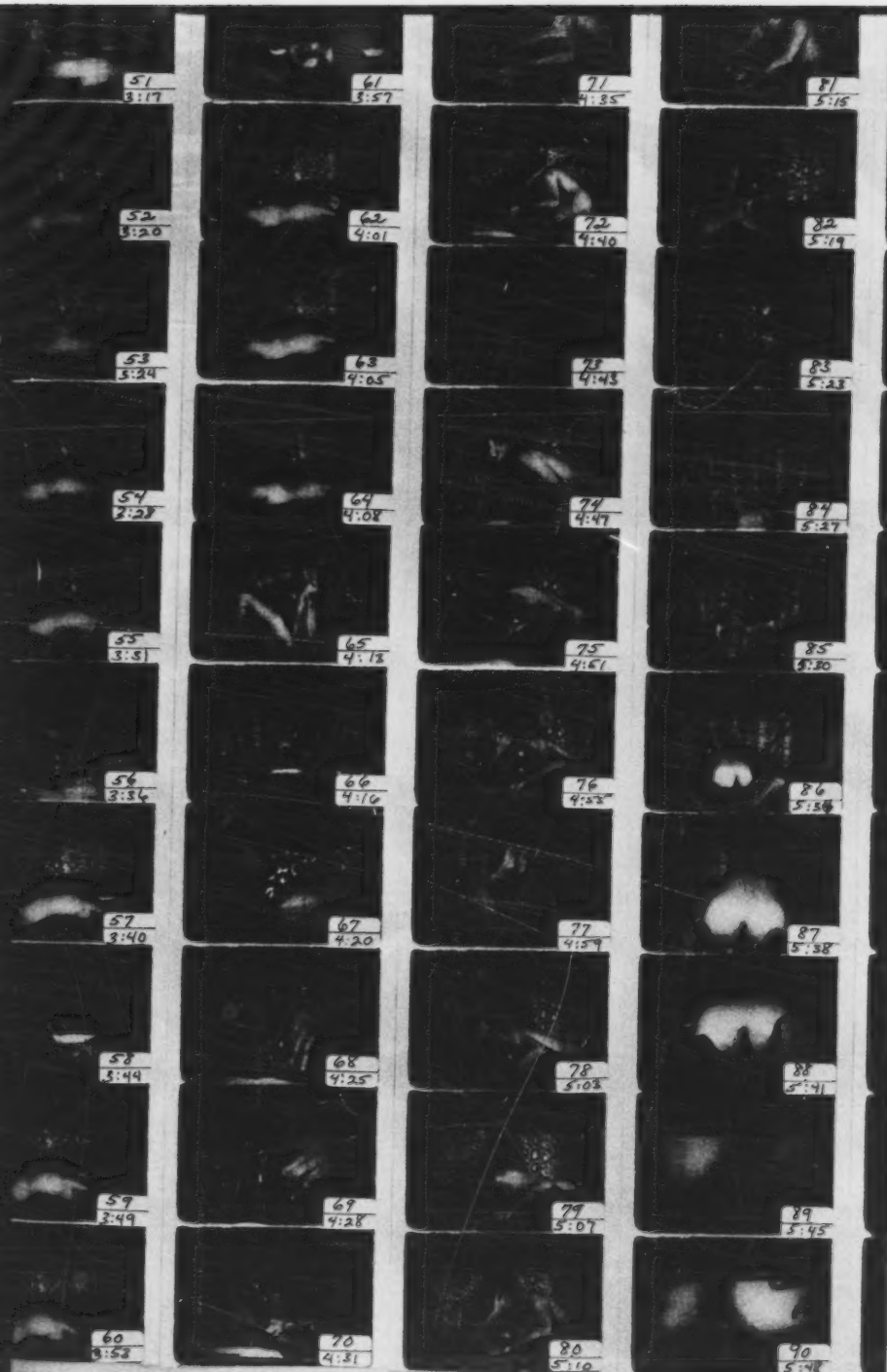
STA CINEMA
CALIFORNIA
-30, 1975.



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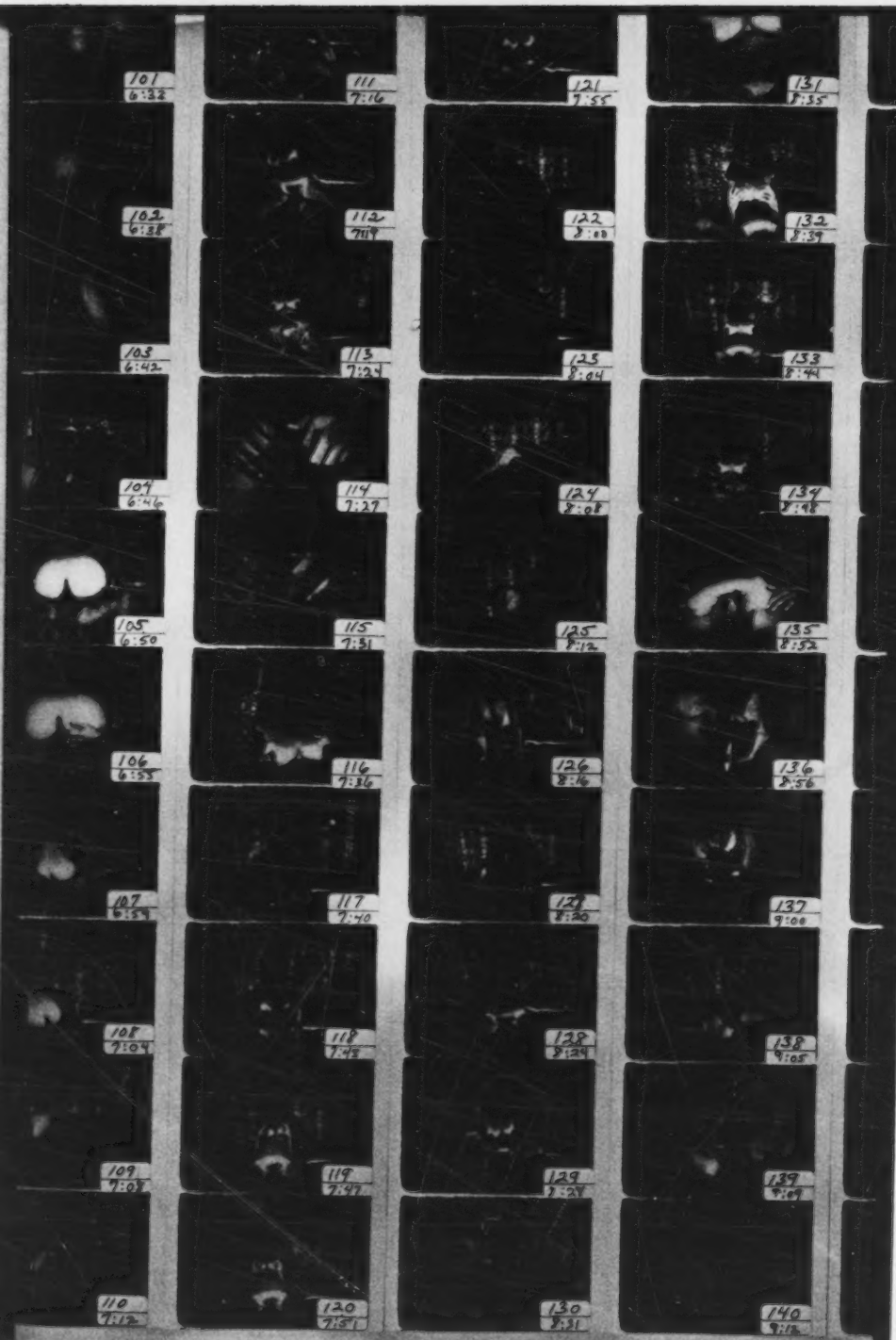
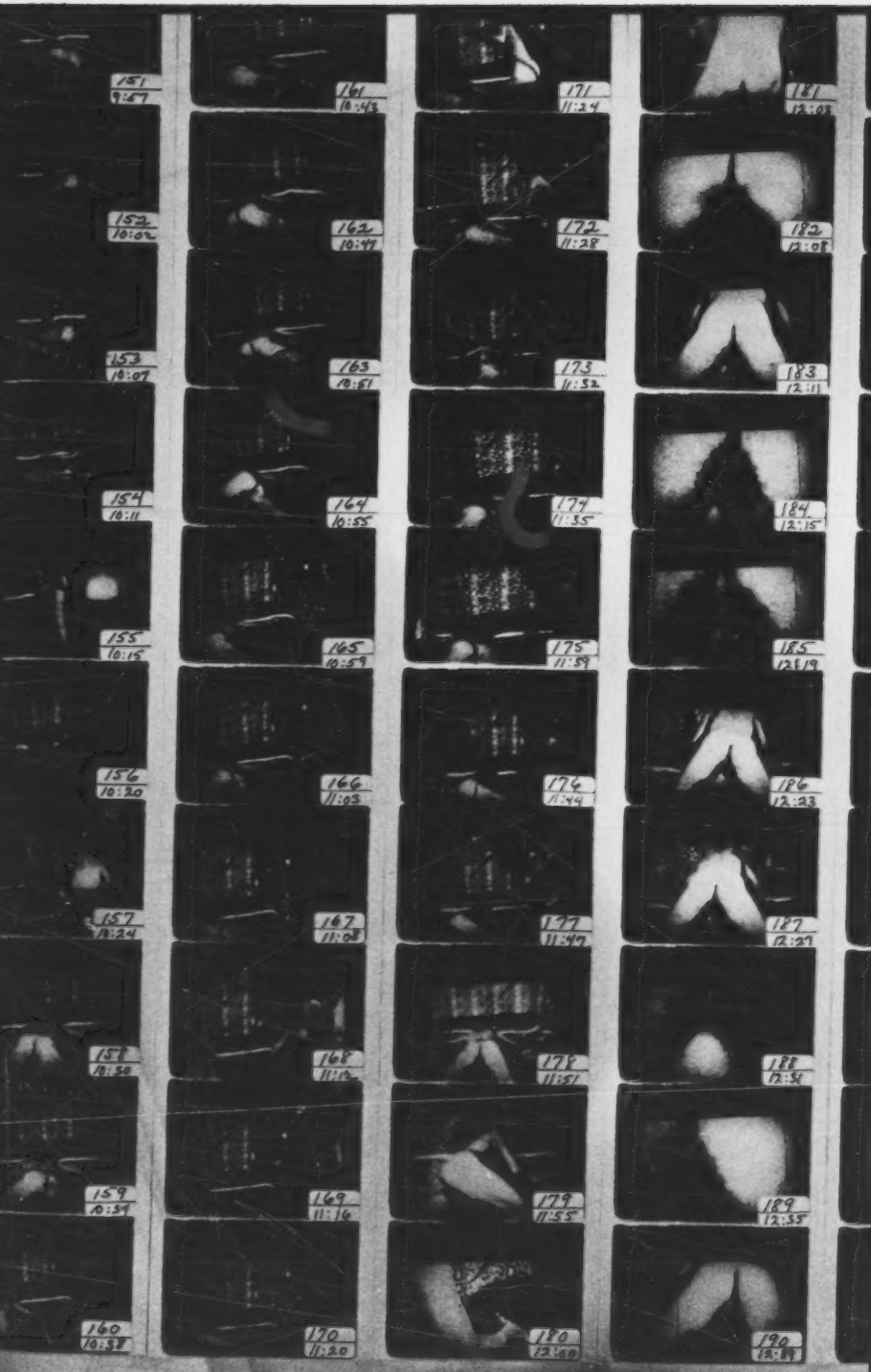
...LPTA CINEMA
..., CALIFORNIA
...-85, 1975.

PART 2. (51-64) SCENES OF FEMALE PERFORMING FELLATIO ON MALE; (65-83) MALE MASTURBATES FEMALE; (84-100) NUDE MALE AND FEMALE ENGAGED IN SEXUAL INTERCOURSE.

COPY BOUND CLOSE IN CENTER



PART 1. (101-134) MALE AND FEMALE IN ORAL INTERCOURSE; (135-136) CLOSEUP OF PENIS EJACULATING; (138-140) FEMALE PERFORMS FELLATIO AT MALE'S REQUEST.



...ED AT:
...ISTA CINEMA
... CALIFORNIA
...30, 1975.

PART 4. (151-154) FELLATIO CONTINUES; (155-179) FEMALE WIPES MALE'S BUTTOCKS WITH BULL WHIP; (180-200) MALE IN SUPERIOR POSITION IN SEXUAL INTERCOURSE WITH FEMALE.

COPY BOUND CLOSE IN CENTER

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CALIFORNIA
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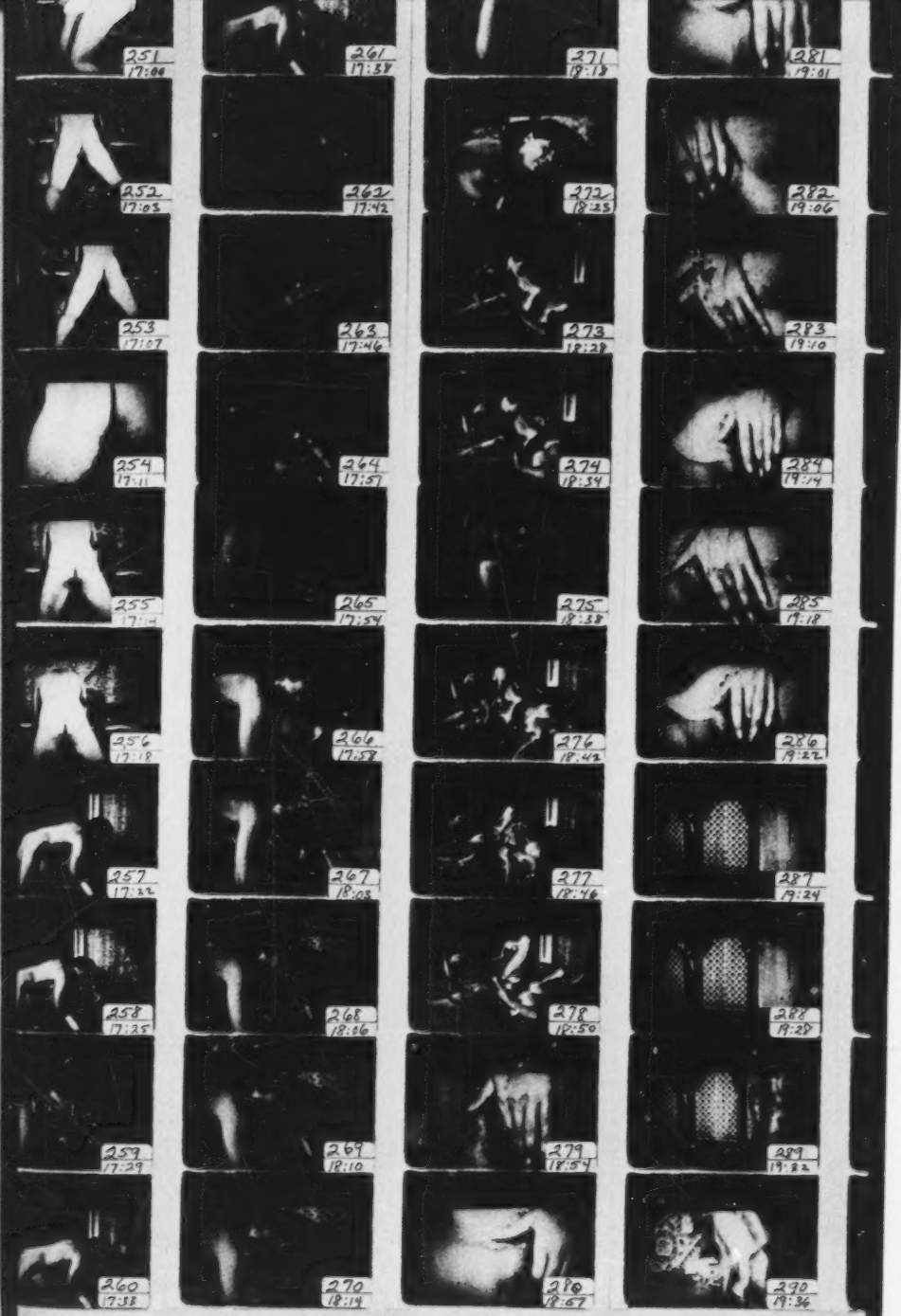
PART 5. (201-222) SEXUAL INTERCOURSE; (223-250) SEXUAL INTERCOURSE REAR ENTRY.



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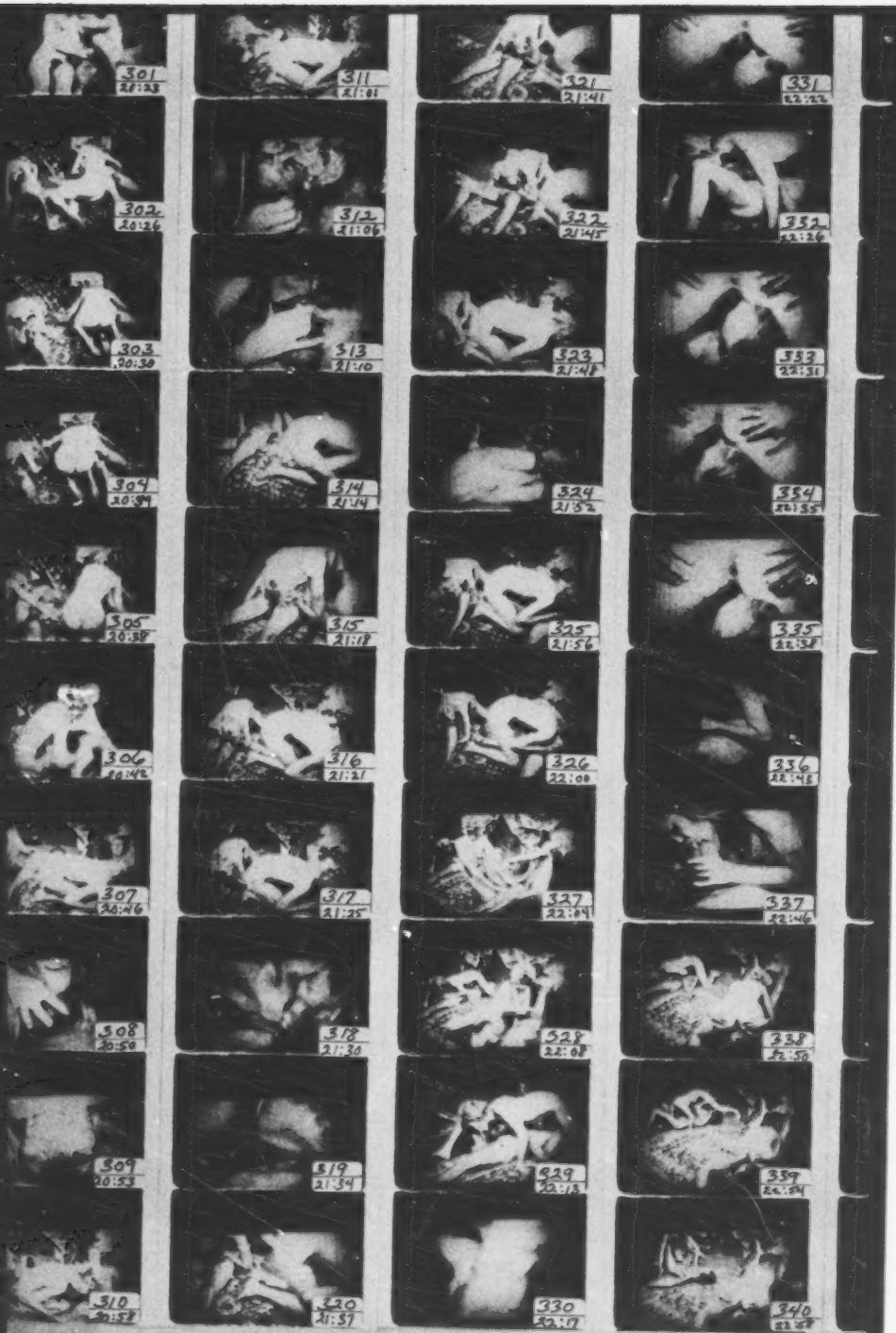
-30, 1975.

PART 6. (251-278) SEXUAL INTERCOURSE REAR ENTRY; (279-286) FEMALE HAND MASTURBATES VAGINA; (287-300) 2 MALES ENTER ROOM WITH 2 FEMALES IN LESBIAN ACTIVITY. EACH MALE TAKES A FEMALE TO DIFFERENT PARTS OF THE ROOM AND ENGAGE IN SEXUAL ACTIVITY.



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, CALIFORNIA
-30, 1975.

PART 7. (301-350) SCENES ALTERNATE BETWEEN COUPLES ENGAGED IN FELLATIO, CUNNILINGUS

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PART 8. (351-354) SAME 4 PERSONS PERFORM ACTS OF FELLATIO AND CUNNILINGUS; (355-399) PENIS EJACULATES; (373-376) CUNNILINGUS; (377-400) SODOMY ON ONE FEMALE WHILE SHE FELLATES ANOTHER MALE.

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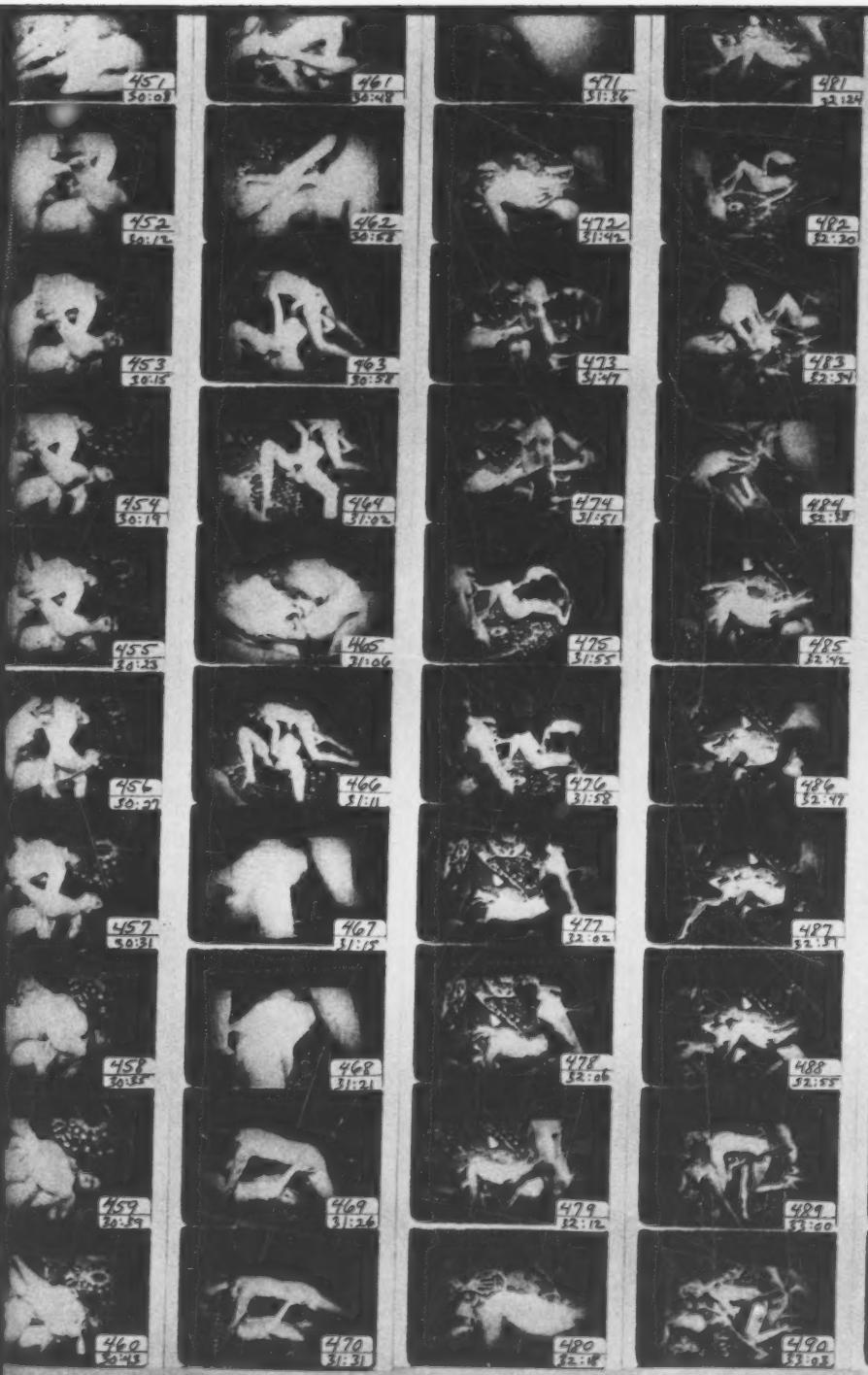
... CALIFORNIA
...30, 1975..

PART 9. (401-403) SODOMY ON FEMALE BY MALE WHILE SHE PERFORMS FELLATIO ON ANOTHER MALE; (404-409) EJACULATION OF PENIS AFTER SODOMY; (410-450) SCENE DEPICT ACTS OF FELLATIO, MASTURBATION. FEMALE PERFORMS FELLATIO ON TWO MALES.



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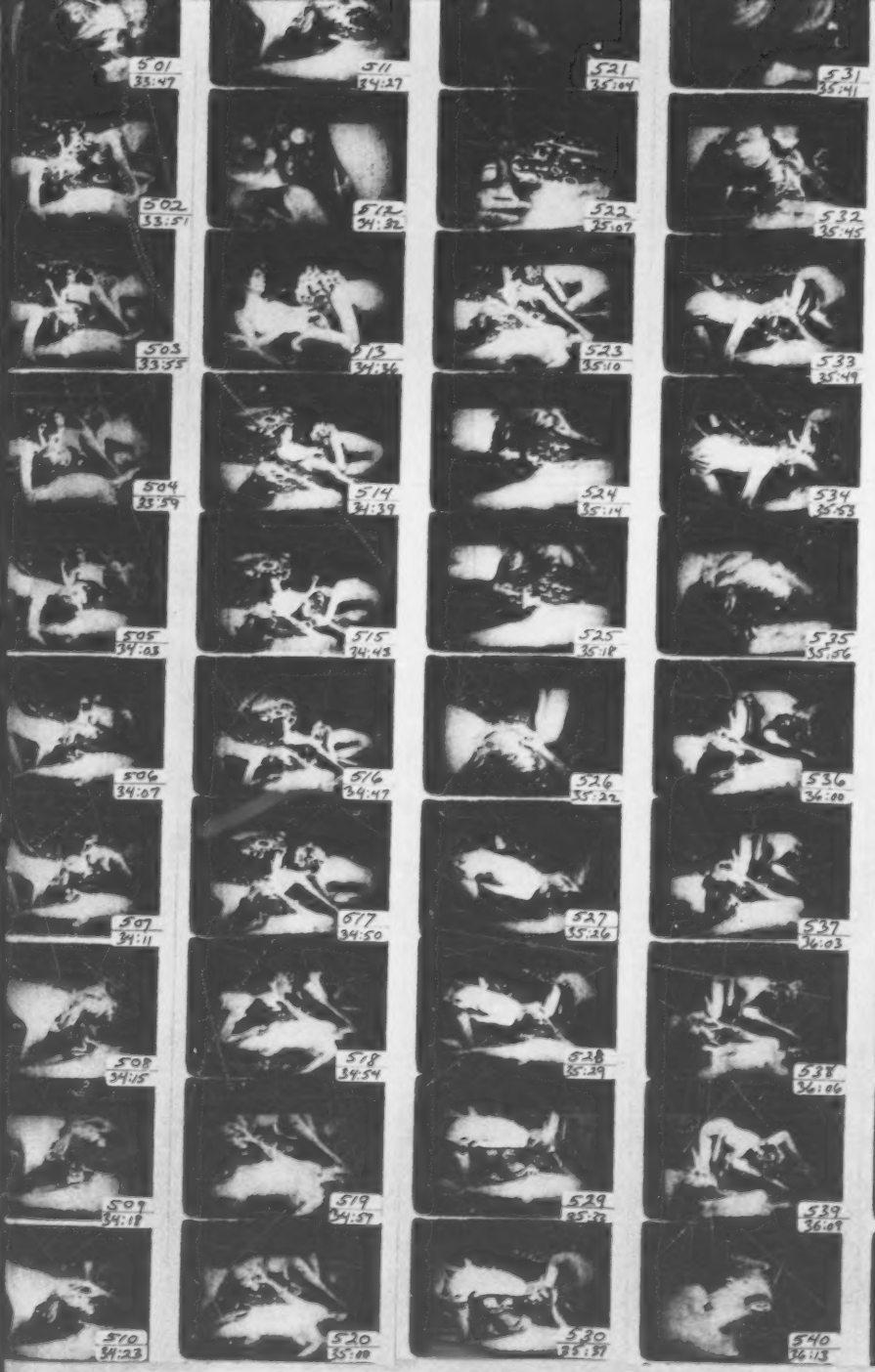
PART 10. (451-500) SAME 4 PERSONS PERFORMING SEXUAL INTERCOURSE, FELLATIO, MASTURBATION.



...TED AT:
...VISTA CINEMA
..., CALIFORNIA
...-30, 1975.

PART 11. (501-550) SAME 4 PERSONS IN SEXUAL ACTS WITH ADDITION OF ANOTHER MALE. SCENES DEPICT FELLATIO; ACT OF SEXUAL INTERCOURSE REAR ENTRY BY ONE MALE ON FEMALE.

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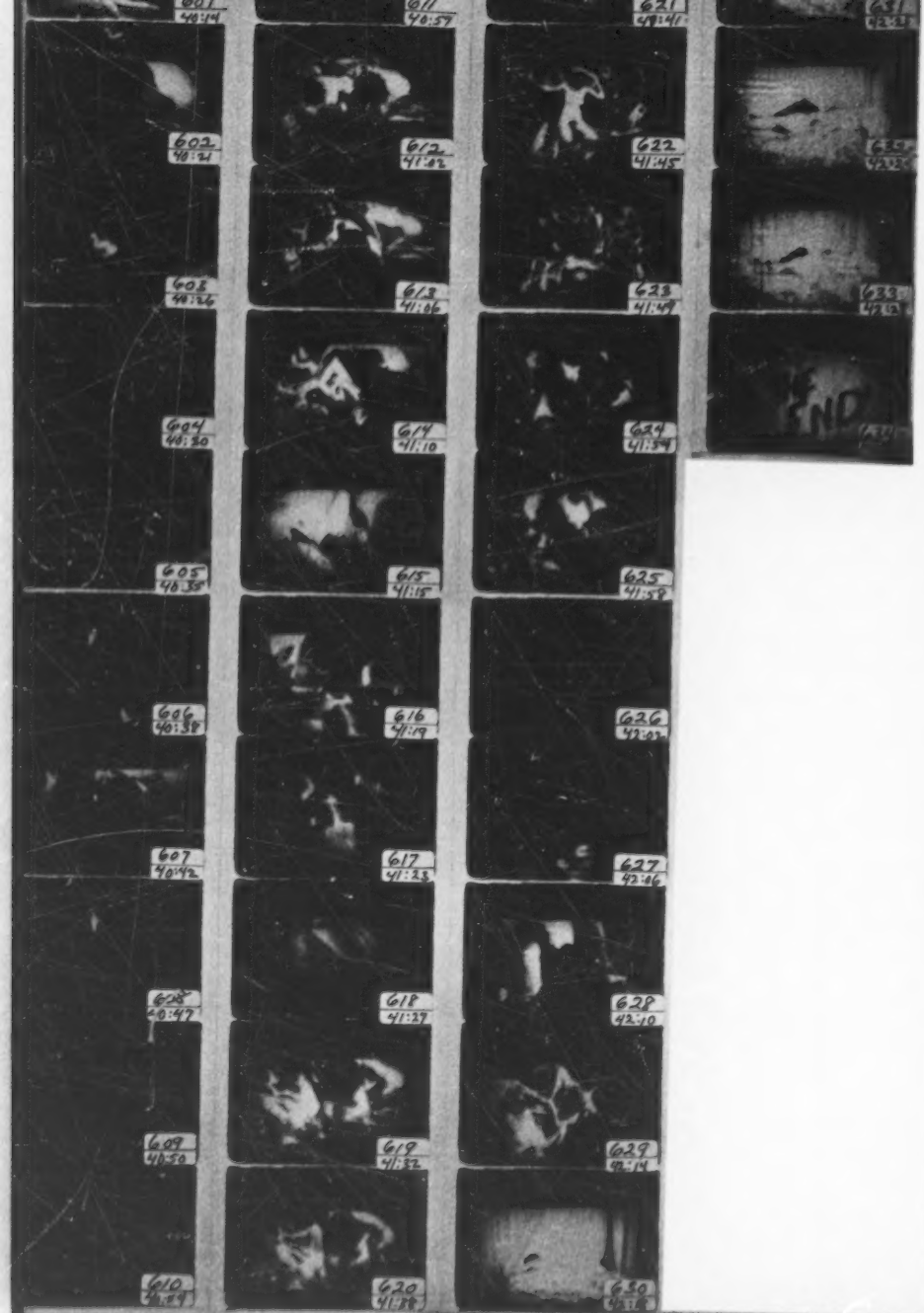
VISTA CINEMA
, CALIFORNIA
-30, 1975.

PART 12. (551-600) SCENES SHOW SAME SUBJECTS IN ACTS OF FELLATIO, CUNNILINGUS AND PORTIONS DEPICT POSITION KNOWN AS 69--SIMULTANEOUS CUNNILINGUS AND FELLATIO. PENIS EJACULATES.



...IBITED AT:
...A VISTA CINEMA
...TH, CALIFORNIA
24-30, 1975.

PART 13. (601-632) SAME INDIVIDUALS LYING AROUND IN BED, LAUGHING AND TALKING. (630-633) SLEEPING MALE IN BED HEARS KNOCK ON DOOR. FEMALE VOICE TELLS HIM TO WAKE UP INDICATING THE PREVIOUS ACTS WERE ALL A DREAM TO HIM. (634) THE END.